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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Restriction on Importation of Meat From Australia and New Zealand

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This rule amends the regulations in 7 CFR part 16, subpart A entitled "Section 204 Import Regulations" to carry out the voluntary agreements concerning the level of 1991 meat imports from Australia and New Zealand entered into by those countries with the United States pursuant to section 204 of the Agricultural Act of 1956, as amended.

EFFECTIVE DATE: December 9, 1991. See SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Norman R. Kallemeyn, (202) 720-8031. Dairy, Livestock and Poultry Division, Foreign Agricultural Service, USDA, room 6616 South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated agreements with the Governments of Australia and New Zealand whereby those countries have voluntarily agreed to limit the quantity of certain meats exported to the United States during calendar year 1991. The Secretary of Agriculture, with the concurrence of the Secretary of State and the United States Trade Representative, is authorized to carry out such agreements and to implement such action.

Presently, title 7, part 16, subpart A entitled "Section 204 Import Regulations" governs the entry or withdrawal from warehouse of certain meats imported from Australia and New Zealand during calendar year 1988. This rule would amend subpart A to delete the provisions relating to Australia and New Zealand for calendar year 1988 which no longer are in effect and insert new provisions to carry out the voluntary agreements entered into by New Zealand and Australia with the United States for calendar year 1991. The definition of meat in the regulations encompasses the Harmonized Tariff Schedules of the United States (HTS) headings which are the subject of the voluntary agreements with Australia and New Zealand. In order to prevent circumvention of the import limitations, the definition also includes meat that would fall within such definition but for processing in Foreign-Trade Zones, territories, or possessions of the United States. In addition, the regulations impose transshipment restrictions which prevent the entry or withdrawal from warehouse for consumption of meat from Australia and New Zealand unless exported from those countries as direct shipments or on through bills of lading or, if processed in Foreign-Trade Zones, territories or possessions of the United States, shipped as direct shipments or on through bills of lading from such areas.

EFFECTIVE DATE: Meat released under the provisions of sections 448(b) and 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1448(b) (immediate delivery), and 19 U.S.C. 1484(a)(1)(A) (entry), prior to December 9, 1991, shall not be denied entry.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception to Executive Order 12291 and the provisions of 5 U.S.C. 553 with respect to proposed rulemaking. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

List of Subjects in 7 CFR Part 16

Meat and Meat Products, Imports.

Accordingly, the Regulations at 7 CFR part 16, subpart A entitled "Section 204 Import Regulations" are amended to read as follows:

1. The authority citation for part 16 continues to read as follows:

Authority: Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854), and E.O. 11539 (35 FR 10733), as amended by E.O. 12188 (45 FR 989).

2. Section 16.2 is revised to read as follows:

§ 16.2 Definitions.

The following terms shall have the meaning set forth in this section:

(a) *Meat* means fresh, chilled, or frozen bovine meat (subheadings 0201.10.00, 0201.20.60, 0201.30.60, 0202.10.00, 0202.20.60, and 0202.30.60 of the Harmonized Tariff Schedule of the United States (HTS)); fresh, chilled, or frozen meat of goats and sheep, except lambs (HTS subheadings 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00); and processed meat of beef or veal other than high quality beef cuts (HTS subheadings 0201.20.40, 0201.30.40, 0202.20.40, and 0202.30.40); and meats which, but for processing in foreign trade zones, territories, or possessions of the United States prior to entry, or withdrawal from warehouse, for consumption in the United States customs territory, would fall within the above descriptions (and HTS subheadings) upon such entry, or withdrawal from warehouse, for consumption.

(b) *United States* means the 50 states of the United States, the District of Columbia, and Puerto Rico.

3. Section 16.3 is revised to read as follows:

§ 16.3 Import documentation.

Meat subject to the restrictions in subsections 16.4 and 16.5 may not be entered into the Customs Territory of the United States unless there is presented, at time of entry, documentation establishing:

(a) That there has been compliance with the applicable conditions of this subpart A and

(b) the country from which the meat was exported in the forms in which it would fall within the definition of meat in HTS subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00.

4. Section 16.4 is revised to read as follows:

§ 16.4 Transshipment restrictions.

During calendar year 1991, no meat of Australia or New Zealand origin may be entered or withdrawn from warehouse for consumption in the United States unless:

(a) It is exported into the Customs Territory of the United States as a direct shipment or on a through bill of lading from the country of origin or,

(b) if processed in Foreign-Trade Zones, territories, or possessions of the United States, it is exported into the Customs Territory of the United States as a direct shipment on a through bill of lading from the Foreign-Trade Zone, territory or possession of the United States in which it was processed.

5. Section 16.5 is revised to read as follows:

§ 16.5 Quantitative restrictions.

(a) *Imports from Australia.* During calendar year 1991, no more than 743 million pounds of meat exported from Australia in the form in which it would fall within the definition of meat in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, or 0204.50.00 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from Australia to the United States.

(b) *Imports from New Zealand.* During calendar year 1991, no more than 445 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, or 0204.50.00 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

Issued at Washington, DC this 2nd day of December, 1991.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 91-29267 Filed 12-6-91; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 723]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 6 through December 12, 1991. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 723 (7 CFR part 907) is effective for the period from December 6 through December 12, 1991.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990-91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990-91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991-92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990-91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991-92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990-91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990-91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulations.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and Districts 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 3, 1991, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 3 opposing, and 1 abstaining, that 1,800,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data of the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,800,000 cartons is equivalent to the amount as specified in the Committee's shipping schedule. However, the Department, based on its independent analysis, and information provided by the Committee, has revised the recommendation and established volume regulation in the amount of 1,900,000 cartons. Of the 1,900,000 cartons, 91.7 percent or 1,742,300 cartons are allotted for District 1, and 8.3 percent or 157,700 cartons are alloted for District 3. Districts 2 and 4 will remain open as they have not yet begun to ship.

During the week ending on November 28, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,273,000 cartons compared with 1,480,000 cartons shipped during the week ending on November 29, 1990. Export shipments totaled 183,000 cartons compared with 225,000 cartons shipped during the week ending on November 29, 1990. Processing and other uses accounted for 236,000 cartons compared with 313,000 cartons shipped during the week ending on November 29, 1990.

Fresh domestic shipments to date this season total 2,712,000 cartons compared with 5,384,000 cartons shipped by this time last season. Export shipments total 493,000 cartons compared with 589,000 cartons shipped by this time last season. Processing and other use shipments total 574,000 cartons compared with 1,126,000 cartons shipped by this time last season.

Regulated shipments for the current week, the first week of general maturity allotment (November 29 through December 5, 1991), are estimated at 1,905,000 cartons on an adjusted allotment of 1,700,000 cartons. Thus, overshipments of 205,000 cartons could be carried forward into the week ending on December 12, 1991.

The average f.o.b. shipping point price for the week ending on November 28, 1991, was $10.39 per carton based on a reported sales volume of 666,000 cartons. The season average f.o.b. shipping point price to date is $11.45 per carton. The average f.o.b. shipping point prices for the week ending on November 29, 1990, was $8.82 per carton; the season average f.o.b. shipping point price at this time last year was $9.67.

The Department's Market News Service reported that, as of December 3, demand is moderate, and the market is reported as about steady. Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. The Committee believes the market is strengthening, however, the fruit is developing slowly, and the demand is being effected by the overall economy. The Committee continued discussion of concerns regarding the Florida citrus industry and increasing market competition. There was also discussion of current weather conditions, and their similarity to last year. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from December 6 through December 12, 1991, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and

that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issues of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on December 12, 1991, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 3, 1991, and this action needs to be effective for the regulatory week which begins on December 6, 1991. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

PART 907—[AMENDED]

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674

2. Section 907.1023 is added to read as follows:

Note This section will not appear in the Code of Federal Regulations

§ 907.1023 Navel Orange Regulation 723.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 6 through December 12, 1991, is established as follows:

(a) District 1: 1,742,300 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 157,700 cartons;
(d) District 4: unlimited cartons.

Dated: December 4, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–29416 Filed 12–5–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R-0735]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This document corrects a previous Federal Register document (Docket No. R-0735) which implements a final rule defining the Board's practices regarding the employment of persons who are not citizens of the United States. The amendments to the Immigration Reform and Control Act of 1986 eliminate the term "intending citizen" and replace it with the term "protected individual." Accordingly, the term "intending citizen" as defined in the Board's Rule will be retained although re-defined to mean a "protected individual" who has evidenced an intention to become a United States citizen.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law (202/452-3920), or Ronald R. Davenport, Jr., Attorney (202/452-3623), Legal Division, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

This document corrects a previous Federal Register document (Docket No. R-0735) published at page 32954 of the issue for Thursday, July 18, 1991. This document provides corrections to account for amendments to the Immigration Reform and Control Act of 1986, Public Law 99-603, 100 Stat. 3359.

Need for Correction

As published, the final regulation contains statements and phrases which may prove to be misleading and are in need of clarification.

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Handicapped, Religious discrimination, Sex discrimination, Wages.

These corrections serve to amend 12 CFR part 268. Accordingly, 12 CFR part 268 is correctly amended to read as follows:

PART 268 - RULES REGARDING EQUAL OPPORTUNITY

1. The authority citation for part 268 continues to read as follows:

Authority: Secs. 10(4) and 11(*1*) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(*1*)).

2. Section 268.1001 is correctly revised to read as follows:

§ 268.1001 Definitions.

(a) *Intending citizen* means a citizen or national of the United States, or a noncitizen who:

(1) Is a protected individual as defined in 8 U.S.C. 1324b(a)(3); and

(2) Has evidenced an intention to become a United States citizen.

(b) *Noncitizen* means any person who is not a citizen of the United States.

(c) *Sensitive information* means:

(1) Information that is classified for national security purposes under Executive Order No. 10450 (3 CFR 1949-1953 Comp., p. 936), including any amendments or superseding orders that the President of the United States may issue from time to time;

(2) Information that consists of confidential supervisory information of the Board, as defined in 12 CFR 261.2(b); or

(3) Information the disclosure or premature disclosure of which to unauthorized persons may be reasonably likely to impair the formulation or implementation of monetary policy, or cause unnecessary or unwarranted disturbances in securities or other financial markets, such that access to such information must be limited to persons who are loyal to the United States.

For purposes of paragraph (c)(3) of this section, information may not be deemed sensitive information merely because it would be exempt from disclosure under the Freedom of

Information Act, 5 U.S.C. 552, but sensitive information must be information the unauthorized disclosure or premature disclosure of which may be reasonably likely to impair important functions or operations of the Board.

(d) *Sensitive position* means any position of employment in which the employee will be required to have access to sensitive information.

3. Section 268.1002 is correctly revised to read as follows:

§ 268.1002 Prohibitions.

(a) *Unauthorized aliens.* The Board will not hire any person unless that person is able to satisfy the requirements of section 101 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324a).

(b) *Employment in sensitive positions.* The Board will not hire any person to a sensitive position unless such person is a citizen of the United States or, if a noncitizen, is an intending citizen.

(c) *Preference.* Consistent with the Immigration Reform and Control Act of 1986 and other applicable law, applicants for employment who are citizens of the United States or intending citizens shall be preferred over equally qualified applicants who are neither United States citizens nor intending citizens.

Board of Governors of the Federal Reserve System, December 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29327 Filed 12-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-32-AD; Amendment 39-8089; AD 91-07-18]

Airworthiness Directives; Ing. Heino Brditschka Flugtechnik Ges.m.b.H. (HB Aircraft Industries AG) Models HB-23/2400-SP and HB-23/2400 Powered Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-07-18, which was previously made effective by individual letters as to all known U.S. owners and operators of Ing. Heino Brditschka Flugtechnik Ges.m.b.H. Models HB-23/2400-SP powered gliders and HB-23/2400 and HB-23/2400 Scanliner and Hobbyliner powered gliders by individual letters. The AD required immediate replacement of the three-blade propeller with a fixed-pitch, two-blade propeller. The AD was issued based upon a reported accident where heavy wear in the hub hardware and cracks in the retainer block of the propeller blades resulted in loss of the propeller and complete destruction of the tail attachment.

DATES: Effective January 3, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-07-18, issued March 29, 1991, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 1992.

ADDRESSES: Ing. HB Instructions 23/2/90, dated December 19, 1990, may be obtained from Ing. Heino Brditschka Flugtechnik Ges.m.b.H. (HB Aircraft Industries AG), Dr. Adolf Scharfstr. 44, 4053 Haid, Austria. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2716; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: On March 29, 1991, priority letter AD 91-07-18 was issued and made effective immediately as to all known U.S. owners and operators of Ing. Heino Brditschka Flugtechnik Ges.m.b.H. Models HB-23/2400-SP powered gliders and HB-23/2400 and HB-23/2400 Scanliner and Hobbyliner powered gliders. The AD required immediate replacement of the three-blade propeller with a fixed-pitch, two-blade propeller. The AD was prompted by a reported accident where heavy wear in the hub hardware and cracks in the retainer block of the propeller blades resulted in loss of the propeller and complete destruction of the tail attachment. Additional inspections have confirmed similar conditions on other powered gliders of the same type design.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued March 29, 1991, to all known U.S. owners and operators of Ing. Heino Brditschka Flugtechnik Ges.m.b.H. Models HB-23/2400-SP powered gliders and HB-23/2400 and HB-23/2400 Scanliner and Hobbyliner powered gliders. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91-07-18 ING. Heino Brditschka Flugtechnik Ges.m.b.H. (HB Aircraft Industries AG): Amendment No. 39-8089; Docket No. 91-CE-32-AD.

Applicability: Models HB-23/2400-SP powered gliders (all serial numbers), HB-23/2400 and HB-23/2400 Scandiner and Hobbyliner powered gliders that are equipped with a three-blade adjustable propeller, certificated in any category.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent loss of the propeller while in flight that could result in damage to the powered glider and loss of control, accomplish the following:

(a) Replace the three-blade propeller with a fixed-pitch, two-blade propeller in accordance with Ing. HB Instructions 23/2/90, dated December 19, 1990.

(b) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(c) The inspections and replacements required by this AD shall be done in accordance with Ing. HB Instructions 23/2/90, dated December 19, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Ing. Heino Brditschka Flugtechnik Ges.m.b.H. (HB Aircraft Industries AG), Dr. Adolf Scharfstr. 44, 4053 Haid, Austria. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on January 3, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-07-18, issued March 29, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on October 31, 1991.

Lawrence A. Herron,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-29224 Filed 12-6-91 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1551-91]

Organization of the Department of Justice; Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Order delegates authority to a specified component of the Department of Justice to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of the settlement does not exceed $10,000. This Order will alert the general public to the component's new authority, and is being codified in the CFR to provide a permanent record of this delegation.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, (202) 501-7075.

SUPPLEMENTARY INFORMATION: This Order has been issued to delegate settlement authority and is a matter solely related to division of responsibility within the Department of Justice. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Claims.

Accordingly, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 28 U.S.C. 509, 510, 515-519.

2. Section 0.89a is amended by revising paragraph (a) to read as follows:

§ 0.89a Delegations respecting claims against the FBI.

(a) The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General under 28 U.S.C. 2672 to consider, ascertain, adjust, determine, and settle any claim thereunder not exceeding $10,000 in any one case caused by the negligent or wrongful act or omission of any employee of the Federal Bureau of Investigation.

* * * * *

Dated: November 30, 1991.

William P. Barr,

Attorney General.

[FR Doc. 91-29301 Filed 12-6-91, 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 52 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises one rule in the Ohio Administrative Code to delete the provision that reclamation operations conducted without a coal mining permit cause or are likely to cause significant imminent environmental harm.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated August 23, 1991 (Administrative Record No. OH–1570), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Ohio Program Amendment Number 52. This amendment proposed a change to the Ohio program at Administrative Code (OAC) 1501:13–14–02.

OSM announced receipt of the proposed amendment in the September 13, 1991, **Federal Register** (56 FR 46588), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 15, 1991. The public hearing scheduled for October 8, 1991, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program submitted on August 23, 1991.

Ohio proposes to revise OAC 1501:13–14–02 paragraph (A)(2) to delete the words "and reclamation." This change would delete the current provision that reclamation operations conducted without a coal mining permit constitute a condition which causes or can reasonably be expected to cause significant imminent environmental harm. However, coal mining operations conducted without a valid permit would continue to be a condition which causes or is likely to cause significant imminent environmental harm. Since the corresponding Federal rule at 30 CFR 843.11(a)(2) is substantively identical to the revised State rule, the Director finds that this revision does not render the State rule less effective than its Federal counterpart.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the September 13, 1991, **Federal Register** (56 FR 46588) closed on October 15, 1991. Comments were received from the Ohio Historic Preservation Office (OHPO). The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The OHPO commented that the proposed Ohio amendment appeared to remove a federal undertaking from a part of the permitting and regulating process. This comment addresses issues beyond the scope of this amendment, which deals only with the issuance of imminent harm cessation orders as part of Ohio's enforcement procedures. Since Ohio's permitting process is not at issue in this amendment, the Director need not address whether reclamation is a federal undertaking within the meaning of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.* Also, as discussed in the Director's Finding, the proposed rule is substantively identical to the Federal rule at 30 CFR 843.11(a)(2). The Director has expressed his approval of this amendment in his finding.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Army Corps of Engineers, and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 52 as submitted by Ohio on August 23, 1991. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 26, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (aaa) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(aaa) The following amendment to the Ohio regulatory program, as submitted to OSM on August 23, 1991, is approved effective [December 9, 1991: Amendment Number 52 which consists of a revision to the Ohio Administrative Code at 1501:13–14–02 paragraph (A)(2) to delete the provision that reclamation operations conducted without a coal

mining permit cause or are likely to cause significant environmental harm.

[FR Doc. 91-29321 Filed 12-6-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 205

[DoD Directive 2040.3]

End Use Certificates (EUCs)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes policies, assigns responsibilities, and prescribes procedures for DoD components to sign End Use Certificates (EUCs) required by foreign governments before foreign defense items can be procured. EUCs are defined as written agreements in connection with the transfer of military equipment or technical data to the United States that restrict the use or transfer of that item by the United States.

DATES: This part is effective November 14, 1991. Written comments on this proposed rule must be received by January 8, 1992.

ADDRESSES: Forward comments to the Office of Assistant Secretary of Defense/International Security Policy (European Policy), room 4D776, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: L. Alton, telephone 703-697-9258.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 205

Government procurement, National defense, Strategic and critical materials.

Accordingly, title 32, subchapter M is amended to add part 205 to read as follows:

PART 205—END USE CERTIFICATES (EUCs)

Sec.

205.1 Propose.
205.2 Applicability.
205.3 Definitions.
205.4 Background and policy.
205.5 Responsibilities.
205.6 Procedures.

Authority: 10 U.S.C. 131.

§ 205.1 Purpose.

This part:

(a) Supersedes the Deputy Secretary of Defense Memorandum, "End Use Certificates," April 9, 1991.

(b) Establishes policies, assigns responsibilities, and prescribes procedures for signing EUCs on foreign defense items.

§ 205.2 Applicability.

This part applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

§ 205.3 Definitions.

(a) *End Use Certificate (EUC).* For the purposes of this part, a written agreement in connection with the transfer of military equipment or technical data to the United States that restricts the use or transfer of that item by the United States.

(b) *Use for defense purposes.* Includes direct use by or for the U.S. Government in any part of the world and transfer by means of grant aid, International Military Education and Training (IMET) programs, Foreign Military Sales (FMS), and other security assistance and armaments cooperation authorities.

§ 205.4 Background and policy.

This part is intended to authorize the execution of EUCs when such a certificate is necessary to facilitate purchases of foreign products when the purchase of such products is in the best interest of the United States.

(a) The Military Departments and other DoD Components purchase products produced by allies and friendly countries and participate in cooperative development programs to promote interoperability, standardization, and an expanded procurement base, and to obtain products that best meet U.S. needs at the lowest cost.

(b) U.S. worldwide security responsibilities are extensive and recognition of these special circumstances has resulted in long-time acceptance in international agreements, by allies and friends, of the need for flexibility in the authorized uses or transfer of purchased or co-developed articles and data. In various circumstances, international agreements have recognized that permissible use of an item or data for U.S. "defense purposes" as defined in § 205.3(b).

(c) Consistent with paragraphs (a) and (b) of this section, DoD Components may sign EUCs, in accordance with the policy and procedures outlined below. While most EUCs requested by foreign governments use general language, their effects may be divided into three categories, as described in the following paragraphs. Authority to approve their execution is limited as follows:

(1) Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize EUCs:

(i) For acquisition of items classified for security purposes by a foreign government.

(ii) For the acquisition of items covered by the nonproliferation agreements to which the United States is a party, such as missile technology, or

(iii) That permit the item to be "used for defense purposes" as defined in § 205.3(b), by the United States.

(2) Category II. EUCs that are not Category I or III are Category II. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category II EUCs only after a determination is made through the coordination procedures set forth in § 205.6(a)(1) that, notwithstanding the use or transfer limitations, the purchase is in the U.S. national interest. The least restrictive provisions possible should be negotiated.

(3) Category III. Secretaries of Military Departments and Directors of Defense Agencies may not authorize the signature of EUCs which limit the right:

(i) For use by or for the U.S. Government in any part of the world, or

(ii) To provide the item to allies engaged together with the United States in armed conflict with a common enemy. Waivers to this prohibition may be granted by the Under Secretary of Defense (Acquisition) (USD(A)). Procedures for requesting such waivers are at § 205.6(a)(1).

§ 205.5 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall:

(1) Monitor compliance with this part.

(2) Develop procedures to ensure timely review of Category II and III items with the Under Secretary of Defense for Policy (USD(P)).

(3) Upon obtaining the concurrence of the USD(P), waive the restrictions in § 205.4(c)(3) when purchase of the item is in the national interest.

(4) When requested, and in coordination with the USD(P), assist the Military Departments and Defense Agencies in negotiating the elimination or amelioration of an EUC's restrictive language.

(b) The Under Secretary of Defense for Policy shall:

(1) Consult with the USD(A) on waivers authorized by this part and, if appropriate, coordinate with the Department of State.

(2) When requested, and in coordination with the USD(A), assist the

Military Departments and Defense Agencies in negotiating the elimination or amelioration of the EUC's restrictive language.

(3) Develop procedures for coordination and review of EUC's internally and with the Department of State.

(4) Establish, with the concurrence of the USD(A), specific acceptable end use restrictions in addition to those set forth in Category I, which shall be added immediately to Category I and a corresponding administrative change made to § 205.4(c)(1).

(c) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Authorize the execution of Category I and II EUCs in accordance with the procedures outlined in § 205.6. This responsibility may not be delegated by the Directors of Defense Agencies; it may be delegated by Secretaries of the Military Departments to civilian officers of their respective departments appointed by the President with the advice and consent of the Senate. Once EUC execution is authorized, the Director of a Defense Agency, or Military Department civilian official who has been delegated authorization authority may delegate the authority to sign individual EUCs.

(2) Establish procedures to ensure compliance with this part. These procedures should ensure compliance, for the life of the purchased item, with the transfer or use restrictions agreed to in signing an EUC. They should also ensure 21-calendar day notification to USD(A) before authorizing the execution of a Category II EUC.

§ 205.6 Procedures.

(a) Procedures for the three categories of EUCs established in § 205.4(c) are:

(1) Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category I EUCs.

(2) Category II. Not less than 21 calendar days before authorizing the execution of a Category II EUC, Military Departments and Defense Agencies shall provide notification to the USD(A). The notification will contain a description of the item and the limitations to be imposed by the exporting government. The USD(A) shall coordinate with the USD(P), providing at least 14 days for review. If appropriate, the USD(P) shall coordinate with the Department of State. The USD(A) shall notify the submitting DoD Component of any further action required before final authorization of the EUC; otherwise, concurrence may be assumed after expiration of the 21-day period.

(3) Category III. To acquire an item requiring a Category III EUC, the Secretary of a Military Department or Director of a Defense Agency must request a waiver from the USD(A). Requests for waivers should specify:

(i) Why it is in the interest of the U.S. Government to procure the item.

(ii) The limitations to be imposed by the exporting government and a justification for acceptance of those limitations by the U.S. Government.

(iii) A statement that no satisfactory alternative to the item, considering cost, schedule, or operational requirements, is available from domestic or foreign sources without equivalent limitations.

The USD(A) shall coordinate the waiver with the USD(P), who, if appropriate, shall then coordinate with the Department of State. USD(A) shall notify the submitting DoD Component of the results.

(b) Copies of signed EUCs of all three categories shall be provided promptly to USD(A).

(c) A record of any waivers or modifications of this policy shall be maintained by the USD(A).

Dated: November 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-29044 Filed 12-6-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-022-WN]

RIN 0938-AD36

Medicaid Program; State Share of Financial Participation

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Withdrawal of interim final rule with comment.

SUMMARY: On September 12, 1991, we published in the **Federal Register** an interim final rule with comment entitled "Medicaid Program; State Share of Financial Participation" (56 FR 46380). It dealt with the use of State taxes and provider donations as the State share of the costs of the Medicaid program. On October 31, 1991, we published a clarifying interim final rule with comment (56 FR 56132), which withdrew and cancelled the September 12, 1991, interim final rule. After further consideration, the Secretary has also decided to withdraw the October 31, 1991 interim final rule.

EFFECTIVE DATE: This notice of withdrawal is effective on December 6, 1991.

FOR FURTHER INFORMATION CONTACT: Theresa Pratt, (410) 966-9535.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 4, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: December 4, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-29460 Filed 12-6-91; 8:45 am]

BILLING CODE 4120-01-M

Administration for Children and Families

45 CFR Parts 233 and 235

RIN 0970—AA75

Aid to Families With Dependent Children

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final Rule.

SUMMARY: These final rules implement three sections of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203 (hereinafter "OBRA-87"), that apply to the Aid to Families with Dependent Children (AFDC) program. They are: (1) Section 9101, which permanently extends the optional disregard of certain inkind assistance in determining eligibility for and the amount of AFDC; (2) section 9102, which authorizes States to establish an optional fraud control program; and (3) section 9133, which provides that a child whose support and maintenance costs are covered in the foster care payment of his or her minor parent may not be regarded as a member of an AFDC family.

In addition, these final rules also implement section 5052 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 (hereinafter "OBRA-90"), which provides for the exclusion from an AFDC assistance unit of children with respect to whom Federal, State, or local foster care maintenance payments or Federal, State, or local adoption assistance payments are made.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Director, Division of

Policy, Office of Family Assistance, Fifth floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401-9289.

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule Provisions and Comments

A 60-day comment period was provided in the May 7, 1990, Notice of Proposed Rulemaking. A total of 41 letters and/or facsimile transmissions were received.

Exclusion of a Foster Care or Adoption Assistance Recipient

Section 1883(b)(10) of the Tax Reform Act of 1986 (Pub. L. 99-514) add section 478 to title IV-E of the Social Security Act.

Section 478 provided that a child with respect to whom foster care maintenance payments under title IV-E are made is not considered a member of an AFDC assistance unit and the child's income and resources are not counted in determining AFDC eligibility and payment amount for an AFDC assistance unit. This exclusion was limited to a child who receives foster care maintenance payments as defined by section 475(4) and authorized by section 472 of title IV-E of the Act. The exclusion did not extend to individuals receiving payments under the Federal adoption assistance program as set forth in section 473 of title IV-E of the Act or to payments under State or local foster care or adoption assistance programs. The exclusion was effective October 1, 1984.

Section 9133 of OBRA-87 amended section 475(4) of title IV-E to provide that where a child lives with his or her minor parent in the same foster family home or child-care institution, the foster care payment of the minor parent must include an amount necessary to cover the maintenance and other costs for the well-being of the child: This section also amended section 402(a)(24) of title IV-A of the Social Security Act to require that, for the period for which such costs are covered, the child will not be regarded as a member of an AFDC assistance unit for purposes of determining the amount of assistance and his or her income and resources shall not be attributed to the AFDC assistance unit. These provisions were effective April 1, 1988.

These final rules also implement section 5052 of OBRA-90 which repealed section 478 of title IV-E. This section also added a new section 409 to title IV-A. This section, in addition to excluding a child receiving Federal foster care maintenance assistance payments from an AFDC assistance unit, provides for the exclusion from an AFDC assistance unit of a child receiving State or local foster care maintenance assistance or Federal, State, or local adoption assistance.

Section 409 of the Act also provides that a child receiving adoption assistance will not be excluded if such exclusion would cause the AFDC benefits of the assistance unit of which the child would otherwise be considered a member to be reduced. For example: Assume that in a State paying the full amount of its need standard, an AFDC assistance unit composed of a caretaker relative and two children receives AFDC benefits of $333, while an assistance unit composed of a caretaker relative and three children receives $402. An adopted child lives with the assistance unit of three and receives an adoption assistance payment of $100. Further assume that if the adopted child were included in the unit and the adoption assistance is counted as income, then the AFDC benefit to the assistance unit would be $302 rather than $333. Therefore, the adopted child would not be included in the AFDC unit because it would reduce the amount of the AFDC benefit. However, if the amount of the adoption assistance were $65, the AFDC benefit to the assistance unit would be $337 rather than $333. Therefore, the adopted child would be included in the AFDC assistance unit because it would not reduce the amount of the assistance unit's AFDC benefits. The State agency must make this determination on a case-by-case basis in accordance with its method of determining AFDC payments.

Federal regulations at § 233.20(a)(3)(vii) permit States to disregard assistance from other agencies and organizations provided that the assistance is for a different purpose than the AFDC benefit, or is for goods and services not included in the State's need standard, or makes up for the difference between the State's need standard and payment standard. This policy is still applicable to adoption assistance. Therefore, when a State elects to disregard adoption assistance in accordance with § 233.20(a)(3)(vii), the portion of the adoption assistance that can be disregarded should be deducted from the total adoption assistance payment prior to determining whether the AFDC benefits of the assistance unit would be reduced if the adopted child were added to the assistance unit and the adoption assistance was counted as income.

The provisions of section 5052 of OBRA-90 are effective May 1, 1991.

Justification for Dispensing With a Notice of Proposed Rulemaking Regarding Amendments Made to the Regulations To Implement Section 5052 of the Omnibus Reconciliation Act of 1990

Discussion of Provision

Section 5052 of OBRA-90, Public Law 101-508, repeals section 478 of title IV-E of the Social Security Act which limited the exclusion to a child receiving Federal Foster Care maintenance payments. Section 5052 amended part A of title IV of the Social Security Act by adding section 409. Section 409 provides for the exclusion from the AFDC unit of children for whom Federal, State, or local foster care maintenance payments or adoption assistance payments are made. It excludes their income and resources from the income and resources of the AFDC assistance unit.

Since the regulatory changes related to section 5052 of OBRA-90 do not involve administrative discretion, but simply implement statutory requirements, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking on the grounds that it is not necessary.

Discussion of Comments

A total of four letters were received from State agencies commenting on the provision of the proposed regulations to implement section 478 of title IV-E that would exclude foster care recipients from an AFDC assistance unit.

Comment: One State agency commented that the regulations could be read to allow title IV-A to provide for the needs of the child of a minor parent, if the payment under title IV-E includes the minor parent only. The commenter believes that we should change the proposed regulations to avoid such an interpretation.

Responses: We disagree that a change in the proposed regulation is necessary. Section 475(4)(B) of title IV-E requires that the child of a minor parent must be covered by the Federal foster care maintenance payments made with respect to his or her minor parent. We assume that the States implementing the title IV-E program will comply with the statutory requirements. Therefore, AFDC would not be provided to the child of the minor parent who receives foster care maintenance payments.

Comment: Two State agencies recommended that the exclusion in section 478 be extended to children who are ineligible for title IV-E foster care payments, but receive State foster care

payments that meet the same needs instead.

Response: Although section 478 of title IV–E of the Act limited the exclusion to title IV–E foster care recipients, subsequent legislation effective May 1991 (section 5052 of OBRA–90) broadens the law to exclude from an AFDC assistance unit children with respect to whom Federal, State or local foster care maintenance or adoption assistance payments are made. In addition, the income and resources of these children shall be excluded in determining the need and the amount of the assistance payment. Accordingly, § 233.20(a)(1)(ii) of the final rules has been revised to provide that exclusion.

Comment: One State agency recommended that the AFDC grant should continue to include the child's portion of the shelter allowance so that it is available when the child returns home from foster care. The commenter believes that the regulation should prohibit receipt of title IV–E and IV–A payments only when such payments are duplicative.

Response: An AFDC payment to an AFDC assistance unit which includes a shelter allowance for a child currently receiving a IV–E foster care payment is not permissible.

Section 478 of the Social Security Act, which was in force prior to May 1, 1991, and section 409, which went into effect May 1, exclude a child receiving foster care benefits under title IV–E from being considered to be a member of an assistance unit for purposes of determining the amount of AFDC the assistance unit is to receive. Accordingly, it is not lawful to include a shelter allowance as part of the assistance paid to an AFDC assistance unit that is attributable to the needs of a child receiving foster care under title IV–E.

Extension of Disregard

Pursuant to section 9101 of OBRA–87, this final rule deletes the time limitation of the disregard in the existing rule at § 233.53. Specifically, the final rule will continue to permit States to disregard, from income and resources, needs-based support and maintenance assistance furnished in-kind by a private non-profit organization; or in cash or in-kind by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal government entity, or by a municipal utility providing home energy. The existing rule was based on prior law, which authorized an identical disregard that expired on September 30, 1987. Therefore, we are retaining the same definitions and State plan requirements as set forth in the current rule. The effective date of this provision was October 1, 1987.

No public comments were received on this provision.

Optional AFDC Fraud Control Program

Current regulations at § 235.110 require States to establish and maintain: (1) Methods and criteria for identifying alleged fraud; and (2) procedures, developed in cooperation with the State's legal authorities, for referring suspected fraud cases to law enforcement officials. Since these activities are conducted for the proper and efficient administration of the AFDC program, they are subject to the regular 50 percent administrative cost matching rate.

Section 9102(a) of OBRA–87 added a new section 416 to the Social Security Act (the Act), which permits State agencies to establish and operate an optional fraud control program. Section 416 authorizes States to: (1) Impose disqualification penalties on an individual based on a determination of an intentional program violation(s) by a State administrative disqualification hearing or by a Federal or State Court; and (2) receive Federal matching at a 75 percent Federal reimbursement rate for costs directly attributed to the operation of a fraud control program.

Further, section 9102(b) added a new section 402(a)(40) to the Act, which provides that a State agency electing the optional program must submit to the Department (with such revisions as may from time to time be necessary) a description and budget for this program and agree to operate it in full compliance with section 416 of the Act. The program description and an annual budget would be provided by a State as a State plan amendment. As in the case of any other State Plan requirement, when the State chooses to revise their optional fraud control program they must submit a new State Plan amendment describing these changes. The Family Support Administration issued financial reporting instructions pertaining to budget data in FSA–AT–88–19 on July 18, 1988.

In drafting regulations to implement section 402(a)(40) of the Act, we included, at section 235.112(e) of the proposed rules, the requirement that the State plan must contain a description of and budget for the optional fraud program along with a written certification that the State agency will operate this program in full compliance with section 416 of the Act.

During our drafting of the final rule, we recognized that this optional fraud certification duplicates the general State plan certification found at the beginning of the plan pre-print document. The general certification specifies that the State agency agrees to administer the AFDC program in accordance with title IV–A of the Act (which includes section 416) and all other applicable Federal laws and regulations. Because this general certification contains the State's acknowledgement that it will adhere to all appropriate title IV–A provisions, including section 416, we have revised § 235.112(e) by removing the certification specific to the optional fraud program.

We also believe that a clarification of the plan budget requirement is in order. Given that States must submit estimates and actual program expenditures to us on a regular basis, we do not feel that it is necessary for a State to amend the plan each time its estimate of the optional fraud control budget changes. Accordingly, we have amended § 235.112(e) to only require that an estimated budget of the optional fraud control program be contained in the initial plan amendment.

The State agency electing to implement the optional fraud program is required by section 416(c) of the Act to proceed against any individual alleged to have committed an intentional program violation through a State agency administrative disqualification hearing or by referring the matter to the appropriate authorities for civil or criminal action in a Federal or State court. Furthermore, the State agency is required to coordinate its actions with any corresponding actions being taken against the individual under the Food Stamp program if the factual issues involved arise from the same or related circumstances.

An intentional program violation is defined at § 235.112(b) to be an action by an action by an individual for the purpose of establishing or maintaining the family's eligibility for AFDC, or for increasing or preventing a reduction in the amount of the grant, that (1) a false or misleading statement or misrepresentation, concealment, or withholding of facts, or (2) an act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity. The requirements at § 235.112(b) implement section 416(c) of the Act.

Section 416(b) further provides that if an individual is found to have committed an intentional program violation by a State or Federal court or State administrative hearing, on the basis of a plea of guilty or nolo contendere, the State agency must disqualify the individual by removing

his or her needs from the grant the following periods: (1) A period of six (6) months upon the first occasion of any such offense, (2) for a period of twelve (12) months upon the second occasion of any such offense, and (3) permanently upon the third or a subsequent occasion of any such offense. In addition, the income and resources of the disqualified individual, but not his or her needs, must be considered in determining the remaining unit members' eligibility and amount of payment. These provisions are implemented by § 235.112(c).

In determining the appropriate disqualification penalty to apply, we proposed in the NPRM that a State agency would be required to count any intentional program violations found to have been committed by an individual while participating in the AFDC program as a resident of another State (section 235.112(c)(3)). We felt that such a requirement would encourage applicants and recipients to accurately report their circumstances to the State agency and act as a deterrent to repeated program violations. In response to the public comments, we have modified this provision by making it optional for State agencies to take into account intentional program violations committed in other States.

Section 416(b) of the Act requires the Secretary to establish by regulation requirements for an administrative disqualification hearing process. In this connection, the House-Senate Conference Report states that "the procedures used to carry out the AFDC fraud control program, *including the hearing process,* are expected to parallel those currently in use under the food stamp program" (Ibid) (emphasis added). In view of the expression of legislative intent, where appropriate, these final rules are modeled on the Food Stamp procedure set forth at 7 CFR 237.16.

The final rule at § 235.113 contains the new AFDC procedures. Those which are derived from the Food Stamp regulations included in this section are: The State agency responsibilities in conducting such hearings (section 235.113(a)), the notice and timeframe requirements afforded an individual (section 235.113(b)(9)), the right of the individual to request a waiver from appearing at an administrative disqualification hearing (section 235.113(d)), and consent agreements (section 235.113(e)).

Section 416(f) of the Act requires a State agency to "provide all applicants for aid to families with dependent children * * * at the time of their application * * * with a written notice of the penalties for fraud * * *" Because Congress viewed prior notice of the penalty provisions as essential to the fraud control program and because all recipients are subject to the disqualification penalties, we believe that it is essential that a notice be provided to current recipients before the penalties may be applied to them. In order to minimize the administrative burden that this would entail, this rule at § 235.112(d) provides that a State could provide the notice as late as a recipient's first redetermination following the date of the Department's approval of the State plan amendment implementing the fraud control program.

Section 9102(c) of OBRA–87 amended section 403(a)(3) of the Social Security Act by adding a new subparagraph "(C)" which provides that Federal financial participation is available for costs directly attributable to carrying out the fraud control program permitted under section 416, including the investigation, prosecution, and administrative hearing of fraudulent cases and any resultant collections. Section 235.112(g) implements this provision.

Further, § 235.112(g) provides that in processing claims for expenses under the fraud program, the State agency must adhere to the cost principles contained in OMB Circular No. A–87. In addition, it provides that, pursuant to § 205.150, the State agency is required to have a cost allocation plan that provides for allocating the costs of common activities that affect both the AFDC and Food Stamp programs. Costs for investigative staff activities at the enhanced 75 percent rate are allowed, provided that such staff bear the position title of "investigator" (or a similar designation) and their official position description describes tasks directly related to fraud investigations. When investigative services are provided by staff in components (either private or governmental) outside the State agency, the costs for such services must be adequately documented for proper claiming at the enhanced 75 percent rate.

With regard to funding for pre-eligibility verification measures, our final rule which was published in the **Federal Register** (55 FR 18727) on May 4, 1990, states that costs attributed to such measures will qualify for Federal matching as administrative costs at the 50 percent rate. However, if a State operates an optional fraud control program under section 416 of the Social Security Act, the rule at § 235.112(g)(2) provides that a 75 percent matching rate may apply to the costs of verification measures performed by fraud unit personnel upon a referral by an eligibility worker based on a suspicion that an applicant may have committed an intentional program violation. Accordingly, the 75 percent matching rate is not available for those verification measures required to be performed by the eligibility worker prior to referral—i.e., verification of information provided by an applicant that is used to confirm his or her eligibility for AFDC and to confirm that such information is relevant in determining the amount of the assistance payment.

Discussion of Comments

A total of 37 letters and facsimile transmissions were received with comments on the optional AFDC fraud control program. Comments were received from 26 State agencies, three State investigative and audit agencies, three investigative associations, one from a State Fair Hearings Office, one from a State Office of Chief Counsel, one from a local agency, and two from legal advocacy groups and foundations. Six State agencies forwarded duplicates of comments prepared by one of the investigative fraud associations, and one State agency sent a second letter with additional comments not included in its initial letter. These comments are discussed below.

Comment: Three State agencies and one State investigative office commented that these regulations should contain a provision that would "mirandize" alleged offenders by informing the accused individual of his/her right to remain silent concerning the charges and that anything said or signed by the individual concerning the charges may be used against him/her in a court of law.

Response: We have already included such a provision in the waiver provisions at § 235.113(c)(2)(ii)(B), and we believe that it is also appropriate for the same provision to be included under the advance written notice provisions as well. Accordingly, we are revising § 235.113(b)(3)(ii) by adding a new clause "(K)".

Comment: One State agency commented that these rules should incorporate a Food Stamp program interpretation pertaining to the advance notice of hearing to require that the notice be mailed "certified mail, restricted delivery" as opposed to the Food Stamp regulatory provision at 7 CFR 273.16(e)(3)(i) requiring the notice mailing as "certified mail, return receipt requested". On this same subject, one legal advocacy service advocated the requirement for the advance notice to be sent as "certified mail, return receipt

requested". One State investigative office wanted detailed provisions indicating what would constitute satisfactory evidence that the accused individual is in receipt of the notice and not another family member. One State agency asked for any rules of "service" authorized under the law of the State. Another State investigative office proposed that these rules should allow State agencies to utilize various forms of service of process.

Response: We are not regulating in this area. State agencies may establish procedures relative to the mailing of notices and service of process that are consistent with due process.

Comment: Four State agencies, one legal advocacy agency, and one State investigative office commented that the Food Stamp program's "clear and convincing" standard of evidence should be incorporated into these rules for arriving at a decision in the disqualification hearing procedure.

Response: The statute does not specifically provide for such a standard, and we see no reason to impose one. We are not aware of any problems which compel us to regulate in this area. In this connection we note that we have not established a standard for the evaluation of evidence in fair hearings governed by § 205.10, and we are not aware of any resulting problems.

Comment: Fourteen State agencies, three State investigative offices, two investigative associations, and one State Office of Chief Counsel objected to the provision of obtaining medical assessments at the hearing officer's discretion. In addition, one of the State agencies also objected to payment by the State agency of such an assessment if the request for the assessment is made by the defense attorney.

Response: Situations do arise when a medical assessment may either corroborate or disprove a statement of an accused individual. Examples of the need for a medical assessment may include a re-evaluation of an incapacity claim of an individual, or, in unemployed parent situations, the ability or inability of a principal earner to fulfill his/her work or training requirements. We believe that the results of a medical assessment may be crucial to a fraud case and the expense of obtaining such an assessment is a legitimate State agency cost which is Federally matched at the enhanced 75 percent matching rate.

In addition, we note that the fair hearing provisions contained in § 205.10 have provided since 1971 that a hearing officer can obtain a medical assessment. We see no reason to prohibit a medical assessment in an administrative fraud hearing if the hearing officer considers it necessary.

Comment: Twenty-one State agencies, two investigative associations, three State investigative agencies, and one State Chief Counsel's Office expressed concern over the provision for establishing interstate agreements with other States to share appropriate information pertaining to disqualification data.

Response: We have reconsidered our position. Because the imposition of interstate agreements is administratively burdensome and operationally complex, we have eliminated the requirement to "track" cases and any associated penalties across State jurisdictions. However, in the interest of State flexibility, we believe that States should have the option to "track" such cases and penalties. Accordingly, we have modified our proposed regulation at § 235.112(c)(3) to permit this option. In addition, we will continue to explore the feasibility of establishing an automated fraud reporting and case tracking system.

Comment: Sixteen State agencies, three investigative associations, one State investigative office, one State audit agency, and one State Office of Chief Counsel advocated the elimination of the proposed requirement for supervisory approval of referrals to investigative units for suspected pre-eligibility fraud detection cases. One State agency indicated that this requirement is unnecessary in its State because "the information is given directly from the front-end investigator to the actual eligibility worker". The fraud associations noted that the approval would preclude direct interface between the eligibility worker and the investigator.

Response: We are concerned about the possibility of routine or frivolous referrals and in the interests of the quality of referrals for investigation, we believe that supervisory approval is appropriate. However, in the absence of data suggesting the likelihood of abuse in this area we agree to remove this proposed requirement. Accordingly, we are deleting paragraph "(ii)" at § 235.112(g)(2).

Comment: Seventeen State agencies, one State investigative office, and one investigative association objected to the protective payments provision in cases where a caretaker relative is disqualified for an intentional program violation. Several of the State agencies and the investigative association indicated that, if it were to remain, the provision should be made available at State option. One State agency noted that this provision is not used in any of the other sanction provisions under the AFDC program.

Response: We have reconsidered our protective payment proposal and are not including it in the final rule. Our purpose was for administrative consistency since protective payments are required to be made due to an individual's failure to comply with various statutory requirements, e.g. when a caretaker relative fails to assign rights to support or fails to cooperate in the determination of paternity and securing child support. However, given the lack of comparable statutory provision, we are withdrawing this proposal. Accordingly, we are deleting the proposed § 234.60(12)(ii). In addition, we are deleting the last sentence at proposed § 235.112(c)(1) pertaining to the protective payee provision and the cross-reference to § 234.60(a)(12)(ii).

Comment: One legal foundation that identified itself as a non-profit public interest law and policy center suggested that the Department of HHS "* * * seek and implement an effective way of punishing the welfare cheater while not allowing him to sponge off the rest of his unit to its members' detriment."

Response: We understand the commenter's concern and recognize that a disqualified individual is likely to remain in the assistance unit household and thereby benefit from the reduced AFDC payment issued. Because the statute is explicit with respect to the disqualification penalty (i.e., the removal of the disqualified individual's needs from the payment determination), we have no basis to develop alternative sanctions (e.g., to remove the disqualified individual from his family).

Comment: Thirteen State agencies, one State investigative office, and one investigative association commented that allowable costs appear to be limited only to those of the activities of the investigator while omitting coverage for other activities necessary to conduct the AFDC Fraud Control program. Commentators also wanted the rules to reflect coverage for direct and indirect costs in their claims for enhanced FFP claims.

Response: The Federal financial participation (FFP) provisions at § 235.112(g) provide for the enhanced Federal matching rate of 75 percent for activities conducted under an approved State plan pursuant to section 416 of the Act. These activities are not limited solely to a State's investigative activities. The regulatory provisions outline the allowability for costs which are "* * * directly attributable to the prosecution, conduct of administrative

disqualification hearings, and fraud collection activities that result therefrom * * *." We have made references in these rules for adherence to all cost principles found at OMB Circular No. A-87 and to cost allocation provisions found at § 205.150. Those rules provide States with the correct methods of claiming all such costs. It would be inappropriate to include in these rules the type of fiscal detail which is already found at the references noted.

Comment: One State investigative association and eight State agencies noted that language in proposed § 235.113(b)(3)(ii)(G) should be stricken because the penalty findings are inappropriate for inclusion in the advance notice.

Response: In the interest of fairness to the individual, we believe that the individual should be informed of what penalty to expect if the finding would be unfavorable to the individual, e.g., if previously sanctioned once, the individual should be aware that if sanctioned again, the disqualification period would be for a period of 12 months.

Comment: Nine State agencies, two State investigative offices, and one State investigative association advocated the elimination of the proposed requirement for the caretaker relative's signature under the waiver of the administrative disqualification hearing procedures as well as the remaining provisions of clauses (B), (C), and (D) of § 235.113(c)(2)(ii) because they are not relevant to the purpose of a person waiving attendance at a hearing.

Response: We believe that the caretaker relative's signature under the waiver procedures is appropriate because the waiver would affect the amount of assistance for the unit for which the caretaker is responsible. In order to assure that the interests of all unit members are protected, we believe that the requirement for the caretaker relative's signature is warranted.

With respect to clause "(C)", we have reconsidered our proposal and believe that a waiver of the disqualification hearing should result in disqualification regardless of the individual's admittance or denial of the State agency's charges. Accordingly, we are amending § 235.113(c)(2)(ii)(C). Clauses "(B)" and "(D)", pertaining to a statement of the individual's right to remain silent and providing an opportunity for the individual to admit to the State agency's charges, are appropriate as part of the waiver process because the individual is entitled to know that he may admit to the facts presented by the State agency and the specific uses that may be made of the admission.

Comment: One State agency inquired whether a disqualification penalty can run concurrently with other program sanctions or can it be imposed on or after other program sanctions are lifted.

Response: Statutory provisions at section 416(e) require a disqualification penalty to be in addition to, and not in substitution for, other sanctions imposed for the same offense(s). The disqualification penalty may run concurrently with other AFDC program sanctions that have nothing to do with fraud.

Comment: Four State agencies commented that the effective date of the disqualification penalty should be disclosed to all individuals regardless of whether a waiver request was made or whether a disqualification hearing was conducted. One State felt that the effective date should be changed to begin by the first of the second month rather than on the first day of the second month.

Response: We agree. We are inserting the effective date of the disqualification hearings for inclusion in decision notices for individuals who did not waive a disqualification hearing, for individuals who did waive a disqualification hearing, and for individuals who signed consent agreements. We are revising § 235.113 (b)(11), (c)(3) and (d)(2)(ii) accordingly.

Comment: Six State agencies and one State Fair Hearing Office noted that automatic disqualification(s) should apply to individuals who waive their rights to disqualification hearings since that is the case in the Food Stamp program.

Response: As previously stated, we have reconsidered our proposed rule and are including in the final rule a provision to conform with the Food Stamp program provisions that impose the disqualification penalty whenever an individual waives his or her right to a disqualification hearing regardless of whether the individual admits or denies that State agency's charges. The disqualification penalty follows from the statutory requirement of imposing a sanction upon the individual having been found to have committed an intentional program violation. The waiver of a disqualification hearing is tantamount to a finding that the State agency's charges are true. Accordingly, we are revising § 235.113(c) in the final rule.

Comment: One State agency commented that the rate of recoupment from the assistance payment should be raised from the current maximum rate of 10 percent of an AFDC family's grant to something higher in view of the Food Stamp program's 20 percent rate of recoupment from the family's food stamp benefit amount in cases of intentional program violations.

Response: The maximum recovery rate of 10 percent is governed by statute at section 402(a)(22) of the Social Security Act and implementing regulations at § 233.20(a)(13). Section 416 in the Act did not authorize changes in the recovery of overpayments.

Comment: One State asked whether a consent agreement "confirmed by a court" means that a judge must sign the consent decree, or whether it may be signed by a county prosecuting attorney, who under its State law, is an officer of the court. One State commented that consent agreements should be confirmed by either the courts or State agency, and not exclusively by the courts in order to be consistent with the Food Stamp program. Another State agency advocated the deletion of court approval of consent agreements in order to be consistent with the Food Stamp program.

Response: According to section 416(b) of the Social Security Act, an individual may be found by a Federal or State court, or pursuant to an administrative hearing, to have intentionally committed fraud. Therefore, the consent agreement confirmation must be made by the court. An attorney in the prosecutor's office is not the court. Accordingly, we are not changing in the final rule the proposed confirmation requirement.

Comment: One State agency wrote to say that it refers all alleged violators of the Food Stamp program for prosecution and intends to continue to do so in the AFDC program.

Response: Operating the AFDC Fraud Control program with a disqualification hearing procedure pursuant to section 416 of the Act is optional. Thus, the State agency may refer all individuals alleged to have committed fraud for prosecution.

Comment: One legal advocacy group commented that hearing officers should be advised as to what their duties are even when individuals fail to appear at AFDC fraud hearings.

Response: Provisions at §§ 235.113 (b)(3)(ii)(D), (b)(8), (b)(9), and (b)(10) provide the criteria for hearing officers' decisions. With respect to the individual's failure to appear at the AFDC disqualification hearing, this situation is addressed at § 235.113(b)(3)(ii)(D). Since an individual may for legitimate reasons have good cause for not appearing at a hearing (e.g., sickness), we are adding "without good cause" language to this section in order to enable an individual to provide a good cause reason for not appearing.

The final rule does not prescribe criteria for determining what constitutes good cause. We believe that the State agency can best determine the appropriate criteria for its State.

Comment: One legal advocacy group commented that the administrative decision format for AFDC disqualification hearings should be of the same quality as the Food Stamp Intentional Program Violation (IPV) administrative decision format.

Response: The required elements of an administrative decision are set forth at § 235.113(b)(9) (i), (ii), and (iii). However, we see no need to prescribe specific formats for decisions. State agencies have historically been permitted to develop their own formats for fair hearings under the AFDC program, and we are unaware of any resulting problems.

Comment: One legal advocacy group commented that AFDC disqualification hearings should only be scheduled when State agencies have sufficient documentary evidence to substantiate that an individual has committed AFDC fraud.

Response: Provisions at § 235.113(a) would require that the State agency must conduct a pre-hearing investigation of an allegation that an individual committed an intentional program violation. We do not believe further Federal regulation is required in this area.

Comment: One legal advocacy group commented that prior to notifying an accused individual of his right to waive his administrative hearing, a third party should review the evidence to ensure the evidence warrants scheduling a hearing.

Response: This proposal would conflict with the single State agency requirement set forth at section 402(a)(3) of the Act and implementing regulations at § 205.100. The single State agency requirement has long been interpreted as requiring that decision-making and other functions which affect individual eligibility for and the amount of the AFDC benefit must be performed by an office of the State IV–A agency, or through the local welfare agency under the supervision of the State IV–A agency.

Comment: One legal advocacy group commented that this rule should follow the Food Stamp program provision of forbidding State agencies from pursuing AFDC disqualification against an individual by both referral for prosecution and administrative disqualification. One State agency believes that there is a conflict with the regulatory provisions at proposed § 235.113(b)(3)(ii)(H) and the statutory provision at section 416(c).

Response: The provision at § 235.113(b)(3)(ii)(H) indicating that the written notice shall include a statement that the hearing does not preclude the State government from prosecuting the individual for an intentional program violation in a civil or criminal court action is consistent with the Food Stamp program's rule which has an identical provision at 7 CFR 273.16(e)(3)(i)(H). With respect to the belief that there may be a conflict between the statutory and proposed regulatory provision, we believe that the statute does not prohibit subsequent referral for prosecution upon completion of the administrative hearing procedure. Indeed, section 416(e) appears to implicitly approve this action. That section states that "[t]he sanctions provided * * * shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved."

Comment: Two State agencies called for the establishment of a single process that would handle both AFDC and Food Stamp cases.

Response: Provisions at § 235.112(a) implement the statutory requirement that coordination must be undertaken with the Food Stamp program where the factual issues arise from the same or related circumstances. We have no objection to a single process that would handle both AFDC and Food Stamp cases in such instances so long as the single State agency requirements found at section 402(a)(3) of the Act and 45 CFR 205.100 are not compromised. For example, a hearing officer who is an employee of the IV–A agency might conduct a hearing for purposes of determining whether fraud has been committed under both the AFDC and Food Stamp programs.

Comment: One State agency commented that the definition of "intentional program violation" should be redefined to be exactly the same as in the Food Stamp program. The commenter remarked that the language "propound a falsity" used in the proposed rule should be deleted.

Response: Our definition derives directly from the statutory language set forth in at section 416(b) of the Act. The language "propound a falsity" is contained in section 416(b)(2).

Comment: One State agency requested specific procedures when combining fair hearings with disqualification hearings in order to safeguard the individual from pressure to waive his or her right to remain silent while exercising the right to contest the agency's claim of an overpayment.

Response: We believe that existing law and regulations regarding these two types of hearings provide adequate safeguards for an individual; we would emphasize, however, that where a State elects to combine a fair hearing and a disqualification hearing, special attention should be given to informing the recipient of his or her rights with respect to the requirements of the two proceedings. Because, in our view, State agencies are in the best position to develop procedures for this purpose, we see no need to regulate in this area.

Comment: Two State agencies said that the notice requirements should be identical to that of the Food Stamp program requirements.

Response: The notice requirements in these rules at section 235.113(b)(3)(ii) are the same as those required by the Food Stamp program rules found at 7 CFR 273.16(e)(3) with the exception of references to the availability of a State's procedures pertaining to individuals found at 7 CFR 237.16(e)(3)(ii); and those pertaining to State agencies, including the use of certified mail, found at 7 CFR 237.16(e)(3). With respect to the exceptions noted, we find no reason to prescribe administrative procedures that have been historically reserved to the States.

Comment: One State agency called attention to a technical error at proposed § 235.113(b)(3)(ii)(J) that incorrectly made a cross-reference to paragraph "(d)" instead of to paragraph "(c)".

Response: We have made the correction.

Comment: One State agency commented that disqualification penalties in the AFDC program are unduly harsh. It can be justified in the Food Stamp program because the Food Stamp program employs a national income and benefit standard and the disqualifications can be applied equitably. In AFDC, need and benefit standards vary widely and because of the varying standards, there is no equity in disqualification.

Response: The disqualification penalties in the AFDC program are provided for in the statute. However, the AFDC Fraud Control Program is an optional program and States are free to not implement the program.

Comment: One State agency requested an expansion of the definition of "intentional program violation" to include a situation where an overpayment does not exist.

Response: The definition set forth at § 235.112(b) does not require that an overpayment actually exist.

Comment: One State agency indicated that it would like to see an expansion of the disqualification penalty to cover criminal prosecutions.

Response: Criminal prosecution is already covered. The final rule at 45 CFR 235.112(c)(1) refers to a finding of having "committed an intentional program violation * * * by a State or Federal court." This finding may be in connection with a criminal fraud action.

Comment: Two State agencies commented that there does not appear to be any provision for recovery of overpayments similar to that contained in the Food Stamp program.

Response: Recovery of overpayments under the AFDC program is governed by the statutory provisions at section 402(a)(22) of the Act and implementing regulations at § 233.20(a)(13). Accordingly, these provisions must be followed.

Comment: One State agency commented that these rules do not establish a venue (place of location) for the disqualification hearing. One State investigative office requested subpoena power for hearing officers.

Response: We do not plan to regulate in these areas. We know of no reason why State discretion in these areas needs to be restricted.

Comment: One State agency commented that under the Food Stamp program rules, the disqualification period resulting from a prior receipt of Food Stamps benefits is postponed until the individual reapplies for and is determined eligible for Food Stamp benefits. These rules do not address this situation.

Response: We agree with the comment that the proposed rule did not specifically address situations involving the termination of a case before the disqualification penalty could be fully or partially applied for the applicable period. We have corrected this omission by adding a provision to § 235.113(b)(ii), (c)(3), and (d)(2)(ii) which postpones the disqualification penalty until after State approval of the individual's reapplication for AFDC. This provision is consistent with Food Stamp practice and emphasizes that fraudulent actions are serious offenses which undermine the integrity of the AFDC program.

Comment: One State agency suggested that we allow a 90-day deadline for the issuance of the final notice of decision (i.e., the State agency would have up to 90 days from the date of the initial notice to issue its final decision).

Response: Given the serious consequences of a disqualification decision on the AFDC family, we believe that a 90-day deadline is both timely and reasonable. A 90-day period also has the administrative advantage of being consistent with Food Stamp program requirements and the regular AFDC fair hearing deadline at § 205.10(a)(6). We have added the 90-day period to § 235.113(b)(9)(iii).

Comment: One State agency indicated that statutory provisions at section 416(f) of the Act require a State agency to provide a one-time-only notice of the penalties for fraud and that since the AFDC program does not require reapplication to continue benefits as the Food Stamp program does, this appears to provide a one-time-only notice.

Response: The statute requires notification at the time of application. It does not make a distinction between individuals who are applying for AFDC for the first time and former recipients who are applying again. Thus, so long as an individual continues to receive AFDC following an application, no further notice to that individual is necessary. However if the individual stops receiving AFDC, and then reapplies, he is again to receive notification. The implementing rules at § 235.112(d) require that notice be provided to all applicants. In this connection, it should be noted that § 235.112(d) also requires that a notice must be provided no later than the next redetermination of eligibility for AFDC for those individuals who are recipients on the date the State plan amendment implementing this program is approved.

Comment: One State agency cited a Food Stamp program regulation and a proposed AFDC regulation as being in conflict. The Food Stamp regulation at 7 CFR 273.16(a)(1) was cited with the following comment. "The State agency may initiate administrative disqualification procedures or refer a case for prosecution regardless of the current eligibility of the individual." Proposed § 235.112(a) was cited with the comment that: "A State agency electing this optional program (IPV) is required to proceed against any individual member of a family applying for or receiving AFDC. This appears to include the option of proceeding against individuals whose benefits have been terminated."

Response: The last sentence of the comment relating to the AFDC provision at § 235.112(a) states, "This appears to *include* the option of proceeding against individuals whose benefits have been terminated" (emphasis added). Because the commenter was trying to highlight difference between the Food Stamp and AFDC provisions, we believe that "exclude" rather than "include" should have been used. Precluding a State form proceeding against an individual whose AFDC case has been terminated would indeed conflict with the Food Stamp requirements. We are revising our proposed regulation at § 235.112(a) to clarify that a State agency must proceed against any individual, whether in current or former AFDC applicant or payment status, if it believes that such individual committed an intentional program violation. We believe that by requiring State agencies to proceed against current and former recipients, the integrity of the AFDC program will be enhanced. In addition, having compatible Food Stamp and AFDC policies in this area will promote compatibility and simplify the administration of the State's fraud control effort.

Comment: One State agency asked if a Food Stamp program regulation at 7 CFR 273.16(c) and the proposed AFDC regulation at § 235.112(c)(3)(i) were in conflict.

Response: The Food Stamp regulation noted by the commenter was erroneously cited as 7 CFR 273.16(c) instead of 7 CFR 273.16(a)(1) which pertains to the provision that the State agency will not initiate an administrative disqualification hearing against an individual in instances when a referral for prosecution has been made or action has been taken by the prosecutor or court. The AFDC provision at § 235.112(c)(3)(i) implements the statutory provision of section 416(e), "* * * the sanctions * * * shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved." We believe that the above cited language of section 416(e) provides State agencies with broad discretion in deciding whether cases should be referred for administrative hearings and/or actions in either State or Federal courts. Accordingly, we are not placing limitations on State discretion to initiate administrative action following referral for prosecution.

Comment: One State agency believes that the proposed regulations are inconsistent with the Food Stamp regulations at 7 CFR 273.15(p) pertaining to a household's rights during a fair hearing. The proposed AFDC regulations were said to lack provisions covering an assistance unit's rights during a hearing.

Response: We listed all of the fair housing rights for the AFDC program found at §§ 205.10(a)(13) (i) through (vi) in the disqualification hearing provisions at proposed § 235.113(b)(7). Thus, within the AFDC program, the same individual rights are provided in all types of hearings.

Comment: One local agency expressed concern with language at proposed § 235.112(a) requiring an agency to proceed against an individual who it believes committed an intentional program violation. The commenter is concerned that this provision takes away discretion as to whether a State should institute a fraud investigation and proceed further.

Response: The agency should determine whether there is a reasonable basis to proceed against an individual by conducting an investigation via its investigative unit. The results of such an investigation should enable the agency to decide whether the case merits taking action against the individual via an administrative disqualification hearing, or making a referral for prosecution. This provision does not remove discretion from the local or State agency on how to proceed against an individual believed to have committed an intentional program violation(s).

Comment: One State agency commented that it supports the AFDC fraud control program in principle, however, it is unable and unwilling to implement this program in its State.

Response: The statute makes this program available to States on an optional basis, so that in event the State agency commenter should decide to change its position, it can always take steps to implement this program at a later date.

Regulatory Procedures

Executive Order 12291

These final rules have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Section 235.112(e) of this final rule contains information collection requirements which are subject to review by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Organizations and individuals desiring to submit comments on this information collection requirement should direct them to the agency official designated for this purpose whose name appears in the preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, (Room 3208), Washington, DC 20503, Attention: Desk Officer for DHHS, ACF.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses.

The primary impact of these final rules is on State governments and individuals. Therefore, we certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments—Maintenance Assistance)

List of Subjects

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance—programs, Reporting and recordkeeping requirements.

45 CFR Part 235

Aid to families with dependent children, Fraud, Grant programs—social programs, Public assistance programs.

Dated: May 23, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: August 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

For the reasons set forth in the preamble, part 233 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 233 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), 49 Stat. 647 as amended; sections 9101 and 9133 of Pub. L. 100–203; and section 5052 of Pub. L. 101–508.

§ 233.20 [Amended]

2. Section 233.20 is amended by revising paragraphs (a)(1)(ii), (a)(3)(vi) and (a)(3)(x) to read as follows:

(a) * * *

(1) * * *

(ii) Provide that the needs, income, and resources of individuals receiving SSI benefits under title XVI, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be included in determining the need and the amount of the assistance payment of an AFDC assistance unit; except that the needs, income, and resources of an individual with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made are included in determining the need and the amount of the assistance payment for an AFDC assistance unit of which the individual would otherwise be regarded as a member where the amount of the assistance payment that the unit would receive would not be reduced by including the needs, income, and resources of such individual. Under this requirement, "individuals receiving SSI benefits under title XVI" include individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93–66, and "individuals with respect to whom Federal foster care payments are made" means a child with respect to whom Federal foster care maintenance payments under section 472(b) and defined in section 475(4)(A) of title IV–E of the Social Security Act are made, and a child whose costs in a foster family home or child care institution are covered by the Federal foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of title IV–E. "Individuals with respect to whom Federal adoption assistance payments are made" means a child who receives payments made under an approved title IV–E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

* * * * *

(3) * * *

(vi)(A) In family groups living together, income of the spouse is considered available for his spouse and

income of a parent is considered available for children under 21, except as provided in paragraphs (a)(3)(xiv) and (a)(3)(xviii) of this section for AFDC. If an individual is a spouse or parent who is a recipient of SSI benefits under title XVI, an individual with respect to whom Federal foster care payments are made, an individual with respect to whom State or local foster care payments are made, an individual with respect to whom Federal adoption assistance payments are made, or an individual with respect to whom State or local adoption assistance payments are made, then, for the period for which such benefits or payments are received, his or her income and resources shall not be counted as income and resources available to the AFDC unit except that a child receiving adoption assistance payments will not be excluded if such exclusion would cause the AFDC benefits of the assistance unit of which the child would otherwise be considered a member to be reduced. For purposes of this exception, "a recipient of SSI benefits under title XVI" includes a spouse or parent receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93–66 and an "individual with respect to whom Federal foster care payments are made" means a child with respect to whom Federal foster care maintenance payments are made under section 472(b) and defined in section 475(4)(A) of the Act, and a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of the Act. "Individuals with respect to whom Federal adoption assistance payments are made" means a child who receives payments made under an approved title IV–E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

* * * * *

(x) Provide that the income and resources of individuals receiving SSI benefits under title XVI, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State or local adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be counted as income and resources of an assistance unit applying for or receiving assistance under title IV–A; except that a child receiving adoption assistance payments will not be excluded if such exclusion would cause the AFDC benefits of the assistance unit of which the child would otherwise be considered a member to be reduced. Under this requirement, "individuals receiving SSI benefits under title XVI" include individuals receiving mandatory or optional State supplementary payments under section 1616(a) of the Social Security Act or under section 212 of Public Law 93–66 and, "individuals with respect to whom Federal foster care payments are made" means a child with respect to whom Federal foster care maintenance payments are made under section 472(b) and defined in section 475(4)(A) of the Act, and a child whose costs in a foster family home or child-care institution are covered by foster care maintenance payments made with respect to his or her minor parent under sections 472(h) and 475(4)(B) of the Act. "Individuals with respect to whom Federal adoption assistance payments are made" made a child who receives payments made under an approved title IV–E plan based on an adoption assistance agreement between the State and the adoptive parents of a child with special needs, pursuant to sections 473 and 475(3) of the Social Security Act.

* * * * *

3. Section 233.53 is amended by revising paragraphs (a) and (c)(4) introductory text to read as follows:

§ 233.53 Support and maintenance assistance (including home energy assistance) in AFDC.

(A) *General.* At State option, certain support and maintenance assistance (including home energy assistance) may be excluded from income and resources.

* * * * *

(c) * * *

(4) Provide that the State may exclude, from income and resources, support and maintenance assistance (as defined in paragraph (b) of this section) which the appropriate State agency certifies is based on need, if the assistance is furnished by:

* * * * *

PART 235—[AMENDED]

Part 235 of chapter II, title 45 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 235 is revised to read as follows:

Authority: Secs. 403, 416, and 1102 of the Social Security Act (42 U.S.C. 603, 616, 1302).

2. New §§ 235.112 and 235.113 are added to read as follows:

§ 235.112. Optional AFDC Fraud Control Program.

(a) *Scope.* A State agency under title IV–A may elect to establish and operate a fraud control program pursuant to section 416 of the Act. A State agency electing this optional program is required to proceed against any individual member of a family regardless of AFDC payment status who it believes to have committed an intentional program violation as described in paragraph (b) of this section through a State administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a State or Federal court. In proceeding against such an individual, the State agency must coordinate its actions with any corresponding actions being taken under the Food Stamp program where the factual issue arise from the same or related circumstances.

(b) *Definition of intentional program violation.* An intentional program violation is an action by an individual, for the purpose of establishing or maintaining the family's eligibility for AFDC or for increasing or preventing a reduction in the amount of the grant, which is intentionally:

(1) A false or misleading statement or misrepresentation, concealment, or withholding of facts, or

(2) Any act interned to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

(c) *Disqualification penalties.* (1) An individual who, on the basis of a plea of guilty or nolo contendere or otherwise, is found to have committed an intentional program violation by a State administrative disqualification hearing pursuant to this section or by a State or Federal court will be treated in the following manner. The State agency shall not take the individual's needs into account when determining the assistance unit's need and amount of the assistance. Any resources and income of the disqualified individual will be considered available to the assistance unit. The individual's needs will not be taken into account for 6 months upon the first occasion of any such offense; 12 months upon the second occasion of any such offense; and permanently upon the third or a subsequent occasion of any such offense.

(2) *Duration of the penalty.* Any period for which a disqualification penalty is imposed shall remain in effect, without possibility of an administrative stay, unless and until the

finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction but in no event shall the duration of the period for which such penalty is imposed be subject to review.

(3) *Applicability of the penalty.* A disqualification penalty imposed on an individual by one IV–A State agency may be used determining the appropriate disqualification penalty for the individual by another IV–A State agency. Where an individual with a prior violation(s) moves from one State to another and has been found to have committed an intentional program violation(s), the State agency may impose the penalty based on the number of such violations committed in other States. A State may establish interstate agreements with other States to share appropriate information.

In cases where a disqualification penalty and other sanctions or penalties apply:

(i) The disqualification penalties in this section shall be in addition to, and cannot be substituted for, any other sanctions or penalties which may be imposed by law for the same offenses; and

(ii) The disqualification penalties imposed under this optional program only affect the individual concerned and cannot substitute for other sanctions under the AFDC program (e.g., failure to participate in JOBS or to cooperate in obtaining child support).

(d) *Notice requirements.* The State agency must provide all applicants with a written notice of the disqualification penalties for fraud under this section at the time of application. Individuals who are recipients on the date of approval of the State plan amendment implementing this optional program must be provided a written notice no later than the next redetermination for AFDC.

(e) *State plan requirements and budget information.* A State agency electing this optional program must operate such program in full compliance with section 416 of the Social Security Act and submit to the Department (with such revisions as may from time to time be necessary):

(1) A description of its fraud control program, and

(2) An initial budget estimate for the program.

(f) *Systems.* The requirements of 45 CFR part 95, subpart F that apply to enhanced funding systems costs are applicable to ADP systems costs related to the AFDC fraud control program.

(g) *Federal financial participation—*

(1) *Allowable costs.* Federal financial participation (FFP) is authorized at the 75 percent reimbursement rate to a State agency with an approved plan to establish and operate a fraud control program pursuant to section 416 of the Social Security Act. All costs must adhere to cost principles found at OMB Circular No. A–87 and to cost allocation provisions found at § 205.150. FFP at the 75 percent reimbursement rate is limited to:

(i) Costs directly attributable to the prosecution, conduct of administrative disqualification hearings, and fraud collection activities that result therefrom;

(ii) Costs of ADP systems that are solely dedicated to the optional fraud control program; and

(iii) Costs for activities performed by investigative staff who are employed by or detailed to the IV–A single State agency provided that such staff bear the position title of investigator (or a similar designation) and work under an official position description that describes tasks directly related to fraud investigation. When services are provided by organizations (private or governmental) outside of the State IV–A agency, the IV–A agency must ensure that the costs of these services are adequately documented for proper claiming at the 75 percent Federal reimbursement rate.

(2) *Pre-eligibility fraud detection.* Verification measures to detect fraudulent applications will be matched at the normal 50 percent administrative rate. For States operating under an approved optional fraud control program pursuant to section 416 of the Social Security Act, a 75 percent matching rate may be available when the verification measures are applied and performed by a fraud investigator on a case that has been referred by an eligibility worker (following completion of the applicable verification measures set forth in the State plan to implement § 235.111) because of a suspicion that the applicant may have committed an intentional program violation as defined in § 235.112(b).

(3) *Cost allocation.* Where common activities or efforts are undertaken in support of both the AFDC and Food Stamp programs, the cost allocation plan pursuant to § 205.150 must provide for a distribution of these costs to both programs.

§ 235.113 Disqualification hearing procedures under optional AFDC fraud control.

(a) *Pre-hearing investigation requirement.* The State IV–A agency that had elected to establish and operate a fraud control program pursuant to section 416 of the Act must conduct an investigation of an allegation that an individual committed an intentional program violation.

(b) *Disqualification hearings.* (1) The State agency may consolidate an individual's fair hearing governed by § 205.10 with a disqualification hearing based on the same or related circumstances provided that the individual receives prior notice of the consolidation. Additionally, the State agency may designate the same hearing officer to preside at a consolidated hearing.

(2) The State agency may provide administration disqualification hearings at the local level in some or all of its subdivisions with a right to appeal to a State agency level de novo hearing.

(3) (i) The State agency shall provide a written notice to the individual alleged to have committed the program violation at least 30 days prior to the date of the disqualification hearing.

(ii) The advance written notice to the individual shall include the following items:

(A) The date, time and location of the hearing;

(B) The charge(s) against the individual;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the individual's failure to appear without good cause will result in a decision by the hearing officer based solely on the information provided by the State agency at the hearing;

(E) A statement that the individual may request a postponement of the hearing provided that such request is made to the State agency at least 10 days in advance of the scheduled hearing;

(F) A statement that the individual will have 10 days from the date of the scheduled hearing to present to the State agency good cause for failure to appear in order to receive a new hearing;

(G) A description of the penalties that can result from a determination that the individual has committed an international program violation and a statement of which penalty is applicable to the individual;

(H) A statement that the hearing does not preclude the State government from prosecuting the individual for an intentional program violation in a civil or criminal court action, or from collecting and overpayment;

(I) A listing of individuals or organizations that provide free legal representation to individuals alleged to have committed international program violations;

(J) An explanation that the individual may waive his or her right to appear at an administrative disqualification hearing as provided in paragraph (c) below; and

(K) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law.

(4) The State agency will require the hearing officer to postpone the scheduled hearing at the individual's request provided that the request for postponement is made at least 10 days in advance of the date of the scheduled disqualification hearing. However, the hearing shall not be postponed for more than a total of 30 days, and the State agency may limit the number of postponements to one.

(5) A hearing shall be conducted by an impartial official of the agency who has not had previous involvement in the case.

(6) Medical assessments shall be obtained at agency expense and made part of the record if the hearing officer considers it necessary.

(7) The individual, or his representative, shall have adequate opportunity to:

(i) Examine the contents of his case file, and all documents and records to be used by the agency at the hearing, at a reasonable time before the date of the hearing, and during the hearing;

(ii) Present his case himself or with the aid of an authorized representative;

(iii) Bring witnesses;

(iv) Establish all pertinent facts and circumstances;

(v) Advance any arguments without undue influence; and

(iv) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(8) Decisions made by the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The transcript or recording of testimony, exhibits, or official reports introduced at the hearing, together with all papers and requests filed in the proceeding, and the decision of the hearing officer shall be made available to the individual or to his or her representative at a reasonable time and place.

(9) Decisions by the hearing officer shall:

(i) In the event of an evidentiary hearing, consist of a decision memorandum summarizing the facts and identifying the regulations supporting the decision;

(ii) In the event of a State agency de novo hearing, specify the reasons for the decision and identify the supporting evidence and regulations; and

(iii) Be made within 90 days of the date of the notice.

(10) The State agency may not disqualify an individual until the hearing officer finds that the individual has committed an intentional program violation. This does not mean, however, that the State agency is precluded from discontinuing, terminating, suspending, or reducing assistance, or changing the manner or form of payment to a protective, vendor, or two-party payment for other reasons. For example, in a State that requires monthly reporting, the State agency may have facts which substantiate that the unit failed to report a change in circumstances even though the State agency has not yet demonstrated that the failure to report was an intentional program violation.

(11) If the hearing officer finds that the individual committed an intentional program violation, the State agency shall provide a written notice to the individual prior to disqualification. The notice shall inform the individual of the decision and the reason for the decision. In addition, the notice shall inform the individual of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period, and in cases of an individual's disqualification resulting from a prior receipt of assistance, the disqualification will be postponed until after a reapplication for AFDC assistance is approved.

(12) If a hearing officer at a local level disqualification hearing determines that an individual committed an intentional program violation, the notice of the local level hearing decision shall, in addition to the items described in paragraph (b)(11) of this section, inform the individual of the right to appeal the decision to the State agency within 15 days of the date of the notice.

(c) *Waiver of the administrative disqualification hearing.* (1) Each State agency may establish procedures to allow an accused individual to waive his or her right to appear at an administrative disqualification hearing.

(2) For State agencies that elect the option of allowing individuals to waive their rights to appear at an administrative disqualification hearing, the following procedures are required:

(i) The advance notice in paragraph (b)(3) of this section must include a statement that the individual may waive the right to appear at an administrative disqualification hearing.

(ii) This statement shall include, at a minimum:

(A) The date that the signed waiver must be received by the State agency and a signature block for the accused individual, along with a statement that the caretaker relative must also sign the waiver if the accused individual is not the caretaker relative, with an appropriately designated signature block;

(B) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law;

(C) The fact that waiver of the individual's right to appear at a disqualification hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the State agency; and

(D) An opportunity for the accused individual to specify whether or not he or she admits to the facts as presented by the State agency.

(3) When the individual waives his or her right to appear at a disqualification hearing, the disqualification and appropriate reduction of assistance shall result regardless of whether the individual admits or denies the charges. The State agency shall send a written notice informing the individual of the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period. If an individual whose case has been terminated waives his disqualification hearing rights, the disqualification period shall be postponed until after a reapplication for AFDC assistance is approved.

(d) *Court actions on consent agreements.* (1) Each State agency may establish procedures to allow an accused individual to sign an agreement confirmed by a court in which he or she admits committing an intentional program violation.

(2) State agencies that allow an individual to sign such an agreement shall follow these procedures:

(i) The State agency shall enter into an agreement with its Attorney General's Office or, where necessary, with county prosecutors which provides for advance written notification to the accused individual of the consequences of signing such an agreement. The

written notification shall include, at a minimum:

(A) A statement for the accused individual to sign that he or she understands the consequences of signing the agreement, along with a statement that the caretaker relative must also sign the agreement if the accused individual is not the caretaker relative;

(B) A statement that signing the agreement will result in a reduction in payment for the appropriate period; and

(C) A statement of which disqualification period will be imposed as a result of the accused individual signing the agreement.

(ii) After the court confirms the agreement, the State agency shall provide a written notice to the individual which specifies the period of disqualification (which shall begin no later than the first day of the second month which follows the date of notice), and the amount of payment the unit will receive during the disqualification period. However, if the court specifies the date for initiating the disqualification period, the State agency shall disqualify the accused individual in accordance with the court order. If an individual whose case has been terminated signs a consent agreement, the disqualification period shall be postponed until after a reapplication for AFDC assistance is approved.

[FR Doc. 91-29363 Filed 12-6-91; 8:45 am]
BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-162; FCC 91-336]

Broadcast Services; Evaluation of the Syndication and Financial Interest Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission by this Memorandum Opinion and Order affirms the Report and Order adopted in this proceeding, (56 FR 26242, June 6, 1991), which substantially relaxed the financial interest and syndication rules. The remaining financial interest and syndication rules apply only to network production, acquisition and syndication of network prime time entertainment programs and to network participation in first-run syndication. Additionally, in response to various petitions for reconsideration of the Report and Order, the Commission clarifies and makes technical corrections to certain aspects of its rules.

EFFECTIVE DATE: January 8, 1992.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, Policy and Rules Division, (202) 632-3410.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 90-162 adopted October 24, 1991, and released November 22, 1991. The complete text of this *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC.

Synopsis of Memorandum Opinion and Order

1. By this Memorandum Opinion and Order (MO&O), the Commission addresses issues raised in petitions for reconsideration of the Report and Order in this proceeding amending the financial interest and syndication rules. The Commission's previous action provided new business opportunities for the broadcast television networks by substantially relaxing the restrictions on the networks' ability to acquire financial interests and syndication rights in television programming. The remaining financial interest and syndication rules apply only to network production, acquisition and syndication of network prime time entertainment programs and to network participation in first-run syndication. Petitions for reconsideration of the Report and Order were filed by: Association of Independent Television Stations, Inc. (INTV); CBS Inc. and National Broadcasting Company, Inc. (CBS/NBC); Coalition); to preserve the Financial Interest and Syndication Rule (Coalition); Chris-Craft/United Television Station Group, Tribune Broadcasting Company, Gaylord Broadcasting Company and Channel 50 TV Corp. (Chris-Craft/Tribune *et al.*); Orbis Communications Inc. (Orbis); the Program Producers and Distributors Committee (PPDC); and Press Television Corporation (Press).

2. In 1970, the Commission adopted financial interest and syndication rules that prohibited television networks from acquiring any financial interests or syndication rights in the broadcast of outside produced programs (*i.e.*, programs not solely produced by the network) other than the right to exhibit such programs on the network. Those rules also prohibited networks from engaging in the domestic syndication business, or from having any ongoing interest in the syndication of programs for non-network broadcast distribution. However, the rules allowed networks to syndicate outside the United States programs that they had solely produced or that had been produced by foreign entities.

3. The Commission initiated this proceeding to determine whether modification of these rules was warranted. As the Commission observed in the Report and Order, over the last 20 years, the role and the power of the three major networks has diminished; cable television has emerged as a competitive force; and the fundamental objectives of the rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—have been advanced. The Commission also indicated that concerns still remain, however, that the underlying objectives of the rules could not be achieved in the absence of such rules. Thus, in the Report and Order, the Commission determined that a measured approach to relief for the networks was the most effective means of achieving its objectives and ensuring that its diversity goals were not undermined.

4. By the Report and Order in this proceeding, the Commission adopted new rules that: (1) Eliminate the restrictions on network ownership and syndication of network programming as to all dayparts, and all programs other than prime time entertainment; (2) allow networks to retain all rights, including financial interests and domestic and foreign syndication rights, in all "in-house" productions of network programs; (3) permit networks to produce "in-house" up to 40 percent of their prime time entertainment schedules; (4) allow networks to acquire all rights, including financial interest, domestic syndication and foreign syndication rights, in outside productions, on their own or another network, subject to certain safeguards; (5) allow networks to engage in domestic syndication of all "in-house" productions aired on their network, subject to certain safeguards; (6) allow networks tc engage in foreign syndication of network programs without limitations; and (7) allow limited network participation in first-run syndication. The Report and Order also revised the definition of "network", established transitional rules for a

"new" network and imposed certain reporting requirements.

5. On reconsideration, parties propose conflicting modifications to the new rules that would either expand or contract their scope. After carefully reviewing all petitions for reconsideration, the Commission finds no new evidence warranting fundamental changes in the rules as adopted. The reconsideration petitions in many respects repeat points already presented and considered in early phases of this proceeding. Thus, by this MO&O, the Commission denies most of these requests that largely reiterate arguments already considered and rejected in its adoption of the original Report and Order. In this MO&O, however, the Commission makes technical corrections to the rule regarding the co-production "cooling-off" period and the continued restrictions on network participation in first-run syndication. The Commission also clarifies the rules with respect to the definition of a co-production, the distinction between a domestic and foreign production entity, and the application of syndication safeguards to a new network.

6. Section 73.662(b) of the rules define a "co-production" as "a program in which copyright ownership, financial responsibility, and business and production control are shared." In the Report and Order, the Commission indicated that the best way to decide who is the "producer" is to examine who controls the production process, who pays for that process and who owns the resulting program. It also stated that each of these criteria is useful for analyzing who actually produces a program. Thus, only if a network shares each of the listed factors with an outside producer does it have substantial control over, and responsibility for, that production. Accordingly, the MO&O reaffirms the conclusion that all three enumerated factors must be shared for a program to qualify as a co-production.

7. In the MO&O, the Commission states that it did not intend to preclude collaborations between a network and a production company owned in part by the network. Therefore, the MO&O clarifies the definition of "domestic production entity" as set forth in § 73.662(c) to confirm that a network's production arrangement with a producer in which it holds a non-controlling interest may be a co-production for the purposes of these rules. Section 73.662(h), the definition of a program "solely produced by a network," also is modified to reflect this clarification.

8. The Commission modifies § 73.662 (c) and (e) of the rules to clarify the domestic and foreign production entity definitions so as to distinguish between the two, in part, based on the location of an entity's principal production headquarters. In the MO&O, the Commission states that it does not want to include as domestic producers those foreign-based production firms that have only a minimal American presence. It also observes that the major studios which are located within the United States, maintain their principal production headquarters in the U.S., and are registered to do business here, are generally recognized to be domestic producers, even though some of these companies are now owned by foreign interests. Moreover, the Commission indicates that it did not intend to permit a U.S. producer with its principal production facilities in the United States to set up a foreign affiliate to avoid the restriction on domestic co-production arrangements.

9. The Commission revises the rule regarding the 30-day "cooling-off" period applicable to domestic co-productions. As stated in the Report and Order, the purpose of the "cooling-off" period is to give "an outside producer who may have been coerced into signing a co-production arrangement * * * the option of negating the arrangement * * *." To better affect the expressed intent of this provision, the Commission revises § 73.659(a)(3) to provide that such a co-production arrangement "may be nullified by the outside production entity during a 30-day period after it is executed and before it becomes binding."

10. The rules adopted in the Report and Order do not accurately reflect the Commission's decision to prohibit networks from actively syndicating any first-run programming in domestic markets. Thus, the MO&O amends § 73.660 of the rules to make explicit the prohibition of network domestic syndication of first-run programming regardless of whether those programs are exhibited during prime time or non-prime time periods.

11. Finally, in the MO&O, the Commission clarifies that an entity that becomes a "network" according to the Report and Order's definition must immediately comply with the safeguards against warehousing and affiliate favoritism in the conduct of syndication, even for programs that are otherwise grandfathered as to the retention or acquisition of syndication rights. The Commission finds no reason not to require such entities to comply with these safeguards. The Commission further notes that it does not anticipate that this requirement will abrogate existing contractual provisions.

Final Regulatory Flexibility Analysis Statement

12. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Report and Order detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substantive changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

13. The Secretary shall send a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981)).

14. Accordingly, It Is Ordered That the petitions for reconsideration filed by the Association of Independent Television Stations, CBS, Inc. and National Broadcasting Company, Inc., the Coalition to Preserve the Financial Interest and Syndication Rule, Chris-Craft/Tribune *et al.*, Orbis Communications, Inc., the Program Producers and Distributors Committee, and Press Television Corporation Are Granted to the extent indicated herein and are otherwise Denied.

15. It Is Further Ordered that pursuant to authority contained in Section 4(i), 301, 303(b), (f), (g), (i), and (j), 307(d), 308(a), 310, 312, 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301, 303(b), (f), (g), (i), and (j), 307(d), 308(a), 310, 312, 313 and 314, Part 73 of the Commission's rules and regulations 47 CFR Part 73, Is Amended as set forth below.

Amendatory Text

Part 73 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. Section 154, 303.

2. Section 73.659 is amended by revising paragraph (a)(3) to read as follows:

§ 73.659 Television network financial interests and syndication rights in programs.

(a) * * *

(3) The program or series is a co-production between the network and a domestic production entity where such co-production arrangement

(i) was initiated, in writing, by the outside production entity and

(ii) may be nullified by the outside production entity during the thirty (30) day period after it is executed and before it becomes binding;

* * * * *

3. Section 73.660 is amended by revising paragraph to read as follows:

§ 73.660 Television network participation in program syndication.

(a)(1) No television network may syndicate any prime time entertainment programs to stations within the United States;

(i) the syndication rights to which have been acquired pursuant to the provisions of § 73.559(a)(4);

(ii) that has not previously been aired on its network. Such programs shall be syndicated domestically through an independent syndicator.

(2) No television network may syndicate any first-run non-network programming to television stations within the United States. Such programs shall be syndicated domestically through an independent syndicator.

* * * * *

4. Section 73.662 is amended by revising paragraphs (c), (e), and (h) to read as follows:

§ 73.662 Definitions for television network financial interest, syndication, and prime time access rules.

For purposes of Section 73.658(k), 73.659, 73.660, and 73.661:

* * * * *

(c) A "domestic production entity" is a production entity registered to do business in the United States, whose principal production headquarters is located in the United States, and that is not owned or controlled by the television network with which it seeks to co-produce.

* * * * *

(e) A "foreign production entity" is a production entity that is registered to do business outside of the United States and whose principal production headquarters is located outside of the United States.

* * * * *

(h) A program "solely produced by a network" is a program in which the network, directly or through a production entity it owns or controls, is the sole copyright owner, has full financial responsibility and full business and production control.

* * * * *

5. Section 73.3526 is amended by revising the first sentence of paragraph (a)(11) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(11) Every television broadcast station owned or controlled by a television network shall maintain the records required by section 73.661. * * *

* * * * *

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 91-29251 Filed 12-6-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-497; RM-6877, RM-7269]

Radio Broadcasting Services; Apalachicola and Carrabelle, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293C1 to Carrabelle, Florida, as that community's first local FM service, at the request of Allen Audio (RM-7269), and denies a petition for rulemaking filed by Richard L. Plessinger to substitute Channel 293C1 for Channel 265A at Apalachicola, Florida (RM-6877). *See* 54 FR 48243, November 22, 1989. Channel 293C1 can be allotted to Carrabelle in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.5 kilometers (7.8 miles) west of the community, in order to avoid a construction permit for Station WKMX(FM), Channel 294C, Enterprise, Alabama. The coordinates for this allotment are North Latitude 29-49-30 and West Longitude 84-47-20. With this action, this proceeding is terminated.

EFFECTIVE DATES: January 21, 1992. The window period for filing applications will open on January 22, 1992, and close on February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-497, adopted November 22, 1991, and released December 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73 [AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 293C1, Carrabelle.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29411 Filed 12-6-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-224; RM-7756]

Radio Broadcasting Services; Americus, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254C3 for Channel 254A at Americus, Georgia, and modifies the license for Station WPUR(FM) to specify operation on the higher class channel, at the request of Sumter Broadcasting Co., Inc. *See* 56 FR 40589, August 15, 1991. Channel 254C3 can be allotted to Americus in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates are North Latitude 32-04-51 and West Longitude 84-15-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–224, adopted November 21, 1911, and released December 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 254A and adding Channel 254C3 at Americus.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29296 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–513; RM–6897; RM–7270]

Radio Broadcasting Services; Dublin, GA; Abbeville and Laurens, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240C1 for Channel 240C2 at Dublin, Georgia, and modifies the construction permit for Station WQZY(FM), Dublin, to specify operation on Channel 240C1 in response to a petition for rule making filed on behalf of State Broadcasting Company, Inc. See 54 FR 48654, November 24, 1989. Coordinates used for Channel 240C1 at Dublin are 32–39–51 and 82–32–18. The petition filed by Southeastern Broadcast Associates and Shelley Reid which was accepted in this proceeding as a counterproposal has been withdrawn pursuant to a settlement agreement between the parties in compliance with § 1.420(j) of the Commission's Rules. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 21, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–513, adopted November 22, 1991, and released December 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 240C2 and adding Channel 240C1 at Dublin.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29412 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–29; RM–7575]

Radio Broadcasting Services; South Burlington, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of James Broadcasting Company, Inc., licensee of Station WXXX–FM, Channel 237A, South Burlington, Vermont, substitutes Channel 238C3 for Channel 237A at South Burlington, and modifies WXXX–FM's license to specify operation on the higher powered. See 56 FR 08976, March 4, 1991. Channel 238C3 can be allotted to South Burlington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.6 miles) southwest to avoid prohibitive interference to Station CBOC(FM), Channel 238A, Cornwall, Ontario, and CFLX(FM), Channel 238A, Sherbrooke, Quebec, Canada. The coordinates for Channel 238C3 are 44–26–54 and 73–13–05. We have obtained Canadian approval for this channel as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–29, adopted November 15, 1991, and released December 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303,

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 237A and adding Channel 238C3 at South Burlington.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 91–29351 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–486; RM–6913 and RM–7253]

Radio Broadcasting Services; Kaukauna and Cleveland, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276C3 to Kaukauna, Wisconsin, as that community's second FM broadcast service, in response to a petition filed by WinCom Limited Partnership ("WinCom"). The coordinates for Channel 276C3 are 44–21–00 and 88–02–00. To accommodate the channel at Kaukauna, we will substitute Channel 251A for Channel 276A at Cleveland, Wisconsin, and modify the license for Station WKTT(FM) accordingly. The coordinates for Channel 251A are 43–59–11 and 87–45–53. *See* 54 FR 47689, November 16, 1989. WinCom originally requested the substitution of Channel 276C3 for Channel 285A and modification of its license for Station WKFX(FM) accordingly. Since an interest has been expressed for Channel 276C3 at Kaukauna and an additional equivalent class channel is not available, the channel is allotted as a second service. This document also dismisses a counterproposal filed by Ashwaubenon Broadcasting Company (RM–7253). With this action, this proceeding is terminated.

DATES: Effective January 21, 1992. The window period for filing applications for Channel 276C3 at Kaukauna will open on January 22, 1992, and close on February 21, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 89–466, adopted November 22, 1991, and released December 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 276A and adding Channel 251A at Cleveland, and by adding Channel 276C3 at Kaukauna.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29413 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–267; RM–7785]

Television Broadcasting Services; Kennett, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 58 to Kennett, Missouri, in response to a petition filed by New Life Evangelistic Center, Inc. *See* 56 FR 47717, September 20, 1991. There is a site restriction 15.5 kilometers (9.4 miles) south of the community and the allotment requires a plus offset. The site restriction is required to avoid the freeze area of St. Louis, Missouri. The coordinates for Channel 58 are 36–06–09 and 90–02–25. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–267, adopted November 21, 1991, and released December 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Missouri, is amended by adding Channel 58, Kennett.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29297 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Department of Defense, Defense Federal Acquisition Regulation Supplement; Air Circuit Breakers

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulation (DAR) Council has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) by adding a new section 225.7017 to implement Section 1421 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101–510). Section 1421 prohibits the purchase of air circuit breakers for naval vessels unless the air circuit breakers are manufactured or produced in the United States.

Note: This rule amends the 1988 edition of DFARS, not the 1991 edition which was published July 31, 1991 (56 FR 36280).

DATES: *Effective date:* November 5, 1991. *Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before January 8, 1992, to be considered in the formulation of the final rule. Please cite DAR Case 91–303 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, OUSD(A), The Pentagon, Washington, DC 20301–3000. Telefax Number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this policy as an interim rule. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule.

B. Background

Section 1421 of the Fiscal Year 1991 Defense Authorization Act (Pub. L. 101–510) added 10 U.S.C. 2507(f) prohibiting purchases of air circuit breakers for naval vessels that are not manufactured or produced in the United States. In addition, the cost of the U.S. components of the air circuit breaker must exceed 50 percent of the cost of all its components. Waivers are permitted on a case-by-case basis when application of the restriction (1) is not in the national security interest, (2) will adversely affect a U.S. company; or (3) will result in procurement from a U.S. company that, with respect to the sale of air circuit breakers, fails to comply with applicable Government procurement regulations or the anti-trust laws of the United States. This interim rule was issued under Departmental Letter 91–023, November 5, 1991, effective that date.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The impact on small businesses, if any, would be beneficial because policy requires small businesses to provide the product of a domestic manufacturer and this rule eliminates competition from foreign circuit breakers. An initial regulatory flexibility analysis has, therefore, not been performed. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DAR Case 91–610D) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense, Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

2. Sections 225.7017 through 225.7017–5 are added to read as follows:

225.7017 Restriction on Air Circuit Breakers for Naval Vessels.

225.7017–1 Restriction.

In accordance with 10 U.S.C. 2507(f), do not purchase air circuit breakers for naval vessels unless—

(a) They are manufactured in the United States, and

(b) The cost of their U.S. components exceeds 50 percent of the cost of all their components.

225.7017–2 Exceptions.

This does not prevent the purchase of spares and repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers where those from alternate sources are not interchangeable.

225.7017–3 Waiver.

Subsequent to the notification at 225.7017–4, the Secretary of the Navy and the Director of the Defense Logistics Agency may waive the restriction on a case-by-case basis if it is determined that applying the restriction in a proposed acquisition—

(a) Is not in the national security interests of the United States;

(b) Will have an adverse effect on a U.S. company; or

(c) Will result in purchase from a U.S. company that, with respect to the sale of air circuit breakers for naval vessels, fails to comply with applicable Government procurement regulations or the anti-trust laws of the United States.

225.7017–4 Waiver notification.

A notice of proposed waiver, with a justification, must be received by the Armed Services and Appropriations Committees of the Senate and House at least 30 days before a waiver can be granted.

225.7017–5 Contract clause.

Use the clause at 252.225–7034, Restriction on Air Circuit Breakers for Naval Vessels, in all solicitations and contracts requiring air circuit breakers for naval vessels, unless—

(a) An exception under 225.7017–2 is known to apply; or

(b) A waiver has been granted in accordance with 225.7017–3.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7034 is added to read as follows:

252.225–7034 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7017–5, use the following clause:

Restriction on Acquisition of Air Circuit Breakers (Nov 1991)

(a) All air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States and the cost of their U.S. components must exceed 50 percent of the cost of all their components.

(b) If compliance with this restriction will have an adverse effect on a U.S. company, the Offeror/Contractor may request a waiver. (End of clause)

[FR Doc. 91–29393 Filed 12–6–91; 8:45 am]

BILLING CODE 3810–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 519 and 552

[APD 2800.12A CHGE 31]

General Services Administration Acquisition Regulation; Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise section 501.105 to add an OMB control number that was inadvertently omitted and to add the new OMB control number approved for the provision at 552.219–73; revise section 519.705–2 to designate the existing text as paragraph (a) and add paragraph (b) requiring all offerors, other than small business concerns, under negotiated solicitations for construction, repair and alteration or leases of real property with an expected award value over the prospectus level to submit a subcontracting plan which would be negotiated concurrently with the other terms and conditions of the contract; revise paragraph (a)(5) of section 519.705–4 to make an editorial change; revise paragraph (f)(2)(iii) of section 519.706–70 to exempt leases of real property except when the terms of the lease specifically provide for the withholding of payment or termination if subcontracting data reports are not

received; revise section 519.708 to modify the prescription for the use of the provision at 552.219–72, Notice to Offerors of Subcontracting Plan Requirements, redesignate the text as paragraph (a) and add paragraph (b) to prescribe a new provision at 552.219–73, Preparation and Submission of Subcontracting Plans, for use in negotiated prospectus level solicitations for construction, repair and alteration or leases of real property; and add section 552.219–73 to provide the text of the provision, Preparation and Submission of Subcontracting Plans. Submission of subcontracting plans by all offerors, other than small business concerns enables the contracting officer to negotiate the plan concurrently with the other parts of the offeror's proposal and ensures that subcontracting goals realistically reflect local economic conditions and the availability of small and small disadvantaged business concerns as subcontractors. Negotiating the subcontracting plan concurrently with the other parts of the offer is intended to reduce or eliminate instances where failure to agree that an offeror's subcontracting plan offers the maximum practical utilization of small and small disadvantaged business concerns (FAR 52.219–8) affects the timeliness of contract awards. GSA has obtained a class deviation from FAR 19.705–2(d).

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on September 11, 1991 (56 FR 46271). No public comments were received. Comments from various GSA offices have been considered and where appropriate incorporated in this final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the GSA certifies that the rule will not have a significant impact on a substantial number of small entities, since the revision, as previously explained in the Summary, will not apply to small business concerns. Accordingly, no regulatory flexibility analysis has been prepared. In its notice of proposed rulemaking, GSA solicited comments from small entities. No comments were received.

D. Paperwork Reduction Act

The Preparation and Submission of Subcontracting Plans provision at 552.219–73 contains an information collection requirement over and above that approved by OMB under FAR 52.219–9 and has been approved by OMB under section 3504(h) of the Paperwork Reduction Act and assigned OMB Control Number 3090–0252. The title of the collection is "Preparation and Submission of Subcontracting Plans." The provision requires all offerors, other than small business concerns, responding to a negotiated solicitation over the prospectus level for construction, repair and alteration or leases of real property to submit a subcontracting plan to be negotiated concurrently with other parts of the offeror's proposal. The respondents are potential GSA contractors. The contracting officer will use the information to evaluate whether or not the Government's expectation of subcontracting opportunities for small and small disadvantaged business concerns is reasonable, negotiate goals consistent with statutory requirements and acquisition objectives, and expedite the award process. The estimated annual burden for this additional collection is 2260 hours. This is based on an estimated average burden per response of 11.3 hours, a proposed frequency of one response per respondent, and an estimated number of likely respondents of 200. Any comments concerning the accuracy of this burden may be directed to the Director, Office of GSA Acquisition Policy (VP), 18th and F Sts., NW., room 4026, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503

List of Subjects in 48 CFR Parts 501, 519 and 552

Government procurement.

Accordingly, 48 CFR parts 501, 519 and 552 are amended as follows:

1. The authority citation for 48 CFR parts 501, 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 501.105 is revised to read as follows:

501.105 OBM Approval under the Paperwork Reduction Act.

The following OMB control numbers apply:

GSAR reference	OMB control No.
507.305	3090–0104
509.105–1(a)	3090–0007
510.004–70	3090–0203
510.011(i)	3090–0246
512.104(a)(2)	3090–0204
512.104(a)(4)	3090–0204
514.201(7)(a)	3090–0200
516.203–4(b)	3090–0243
519.708(b)	3090–0252
522.406–6	1215–0140
523.370	3090–0205
525.105–70(d)	3090–0198
525.205	3090–0240
532.502–3	3090–0229
532.905–70	9000–0102
532.905–71	3090–0080
537.110(a)	3090–0197
537.110(b)	3090–0006
538.203–71	3090–0121
542.1107	3090–0027
546.302–70	3090–0027
546.302–71	3090–0027
546.570	3090–0227
552.207–70	3090–0104
552.210–74	3090–0203
552.210.79	3090–0246
552.212–1	3090–0204
552.212–71	3090–0204
552.214–75	3090–0200
552.216–71	3090–0243
552.219–73	3090–0252
552.223–71	3090–0205
552.225–70	3090–0198
552.225–75	3090–0240
552.228–74	3090–0189
552.232–74	3090–0229
552.232–79	3090–0080
552.237–70	3090–0197
552.237–71	3090–0006
552.238–72	3090–0121
552.242–70	3090–0027
552.246–70	3090–0027
552.246–72	3090–0027
552.249–71	3090–0227
GSA–72	3090–0121
GSA–72–A	3090–0121
GSA–527	3090–0007
GSA–618–D	1215–0149
GSA–1142	3090–0080
GSA–1364	3090–0086
GSA–1678	3090–0027
GSA–2419	9000–0102
570.802(c)	3090–0086

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

3. Section 519.705–2 is revised to read as follows:

519.705–2 Determining the need for a subcontracting plan.

(a) Before making a determination under FAR 19.705–2 that no subcontracting opportunities exist on a prospective contract, which meets the dollar threshold, the contracting officer must submit the determination to the SBTA for review and comments. The

SBTA shall contact the Director, Office of Small and Disadvantaged Business Utilization (AU), and consider any comments or recommendations offered.

(b) The requirement for submission of a subcontracting plan by only the apparent successful offeror (FAR 19.702(a)(1)) does not apply to negotiated solicitations for prospectus level projects for construction, repair and alteration or leases of real property. Except for lease alterations (see 519.702), negotiated solicitations for prospectus level projects for construction, repair and alteration or leases of real property shall require submission of a subcontracting plan in the format described in FAR 52.219-9 by all offerors that are not small business concerns. The plan will be negotiated concurrently with the cost and any required technical and management proposal. If an offeror fails to submit the required subcontracting plan and/or fails to correct deficiencies in the plan within the time period specified by the contracting officer, the offeror will be ineligible for award.

4. Section 519.705-4 is amended by revising paragraph (a)(5) to read as follows:

519.705-4 Reviewing the subcontracting plan.

(a) * * *

* * * * *

(5) Except as provided in (a)(2), above, GSA Form 3584 must be used by the procuring contracting officer (PCO) and SBTA when reviewing subcontracting plans. Its use by the SBA/PCR when reviewing plans is optional.

* * * * *

5. Section 519.706-70 is amended by revising paragraph (f)(2)(iii) to read as follows:

519.706-70 Monitoring contractor compliance with subcontracting plans.

* * * * *

(iii) A statement that if the report is not received within 10 days from the date of the notice, the contracting officer will consider withholding payments as deemed appropriate under the circumstances until the report is relieved and may terminate the contact for default. This statement does not apply to leases of real property, unless the terms of the lease expressly provide for the withholding of payment or termination under this circumstance.

* * * * *

6. Section 519.708 is revised to read as follows:

519.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.219-72, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of the solicitation if the contract amount is expected to exceed $500,000 ($1 million for construction) except for (1) negotiated prospectus level solicitations for construction, repair and alteration or leases of real property, (2) acquisitions set aside for small business, (3) solicitations for personal services, or (4) solicitations for work to be performed outside any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. This provision must not be used when the provision at 552.219-73, Preparation and Submission of Subcontracting Plans, prescribed in (b), below, is included in the solicitation.

(b) The contracting officer shall insert the provision at 552.219-73, Preparation and Submission of Subcontracting Plans, in negotiated solicitations for prospectus level projects for construction, repair and alteration or leases of real property.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 552.219-72 is amended by revising the introductory paragraph to read as follows:

552.219-72 Notice to Offerors of Subcontracting Plan Requirements.

As prescribed in 519.708(a), insert the following provision:

* * * * *

8. Section 552.219-73 is added to read as follows:

552.219-73 Preparation and Submission of Subcontracting Plans.

As prescribed in 519.708(b), insert the following provision:

Preparation and Submission of Subcontracting Plans (Nov. 1991)

(a) This solicitation requires the submission of a subcontracting plan in the format described in FAR 52.219-9 by all offerors that are not small business concerns. In preparing its subcontracting plan, the offeror shall take into consideration local economic conditions and the availability of small and small disadvantaged business concerns. The subcontracting plan should reflect the maximum utilization of small and small disadvantaged business concerns consistent with efficient contract performance (FAR 52.219-8).

(b) The subcontracting plan will be negotiated concurrently with cost and any required technical and management proposals. Consequently, failure to submit the subcontracting plan and/or correct deficiencies in the plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of Provision)

Dated: November 22, 1991.

Arthur E. Ronkovich,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 91-29308 Filed 12-6-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket No. 47483; Notice 91-21]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Amendment to Final rule.

SUMMARY: The Department is amending its regulations regarding transportation for individuals with disabilities. The Department has received several requests to delay the effective date of certain of the technical standards specified for accessible vehicles. The Department has considered all of the requests, and has determined it appropriate to delay until January 26, 1992, the standard specifying the door height in vehicles over 22 feet. This action is necessary to allow for the necessary redesign and testing of vehicles that will have to be modified to meet this requirement.

EFFECTIVE DATE: This amendment is effective December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC, 20590 (202) 366-9306 (voice); (202) 755-7687 (TDD), or Susan Schruth, Office of the Chief Counsel, Urban Mass Transportation Administration, same address, room 9316 (202) 366-4011 (voice); (202) 366-2979 (TDD).

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1991, the Department of Transportation (DOT) published its final rule implementing the transportation provisions of the Americans With Disabilities Act of 1990 (ADA, 56 FR 45584). This rule covered all aspects of transportation activities needed to comply with the ADA. The rule contains vehicle acquisition, lease,

and remanufacture requirements for public and private entities, standards to determine what is an accessible transportation vehicle, standards for accessible transportation facilities, and service criteria, including a general nondiscrimination provision, employee training and maintenance provisions, and the requirement to provide paratransit service for all public entities operating fixed route transportation service.

With few exceptions, these regulations went into effect October 7, 1991. Of particular importance to today's notice is the effective date for accessible vehicle standards. The provision implementing the acquisition requirements of the ADA keys the effective date for accessible vehicle requirements to the "solicitation" for the vehicles. "Solicitation" is defined in the final rule as "* * * the closing date for submission of bids or offers in a procurement."

Thus, the technical standards which define what is an accessible vehicle (contained in part 38 of the September 6, 1991 rule) apply to vehicles for which bids are due on and after October 7, 1991. The September 6, 1991 rule contains one exception to this: The vehicle specification that vehicle lift platforms must be 30" by 48" has an effective date of January 26, 1992. This means that the new lift platform specifications must be in any bid which has a bid submission date on or after January 26, 1992.

This rule

The Department has received both letters and telephone calls from vehicle manufacturers concerning the effective date for the technical standard requiring a 68 inch door height for vehicles over 22 feet in length. The manufacturers have asserted that they cannot meet the requirement of the vehicle specification by the October 7, 1991, effective date.

The Department has considered the various requests for extension of the effective date. While we are concerned that the ADA and its regulatory provisions be implemented in the most expeditious way possible, the Department believes, as with the lift platform specification, that there are certain circumstances which warrant additional lead time.

Accordingly, the Department has decided to extend the effective date for this technical specification. Section 38.25(c) requires that the clearance between the top of the door opening and the raised lift platform be a minimum of 68 inches for vehicles in excess of 22 feet. Manufacturers have indicated to UMTA that they need from six to 15 months to redesign their vehicles to meet this new requirement. The Department has determined that it is appropriate to extend the effective date for this technical standard only until January 26, 1992. This additional time will be sufficient to permit each manufacturer to determine its redesign approach, to determine the manufacturing cost impacts of the redesign changes, and to submit bids which comply with the standard by January 26, 1992. The time between solution and manufacture/delivery can be used to actually implement needed design changes. The Department will, in the meantime, consider requests for equivalent facilitation determinations relating to the door height requirement.

Regulatory Analyses and Notices

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures

This is not a major rule under Executive Order 12291, since it will not result in an annual cost in excess of $100 million. As it is simply an effective date change of a single section, the rule is not significant under the Department of Transportation's Regulatory Policies and Procedures.

Paperwork Reduction Act

This rule contains no information collection requirements subject to OMB approval under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Department certifies, under the terms of the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. The rule will relieve a burden on a small number of large and small manufacturers.

Executive Order 12612

The impact of the delayed effective date published today will have minimal Federalism effects.

Administrative Procedure Act

The Department is publishing this final rule without prior opportunity for notice and comment. The Department has determined, because this extension is needed immediately in order to avoid delaying pending bus procurements due to redesign required to meet the door height requirement, that notice and comment would be unnecessary, impracticable, and contrary to the public interest. For the same reason, the Department has determined that the rule may be made effective immediately.

Lists of Subjects

49 CFR Part 37

Building, buses, Civil rights, Handicapped, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Issued this 27th day of November, 1991 at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR part 37 as follows:

PART 37—[AMENDED]

1. The authority citation for part 37 continues to read as follows:

Authority: Americans With Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. Section 37.13 is revised to read as follows:

§ 37.13 Effective date for certain vehicle specifications.

(a) The vehicle lift specifications identified in §§ 38.23(b)(6), 38.83(b)(6), 38.95(b)(6), and 38.125(b)(6) of this title apply to solicitations for vehicles under this part after January 25, 1992.

(b) The vehicle door height requirements for vehicles over 22 feet identified in § 38.25(c) of this title apply to solicitations for vehicles under this part after January 25, 1992.

[FR Doc. 91–29318 Filed 12–6–91; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 56, No. 236
Monday, December 9, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 514

[Docket No. 91N-0074]

RIN 0905 AD45

Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to March 9, 1992, the comment period for the proposed rule to require manufacturers to use a terminal sterilization process when preparing a sterile drug product unless such a process adversely affects the drug product (October 11, 1991, 56 FR 51354). The agency is extending the comment period in response to requests.

DATES: Comments by March 9, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 301-295-8038.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 11, 1991 (56 FR 51354), FDA issued a proposed rule to amend the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to require manufacturers to use a terminal sterilization process when preparing a sterile drug product unless such a process adversely affects the drug product. The proposal would also amend the regulations governing the approval for marketing of new drugs and antibiotics for human use and new animal drugs to require applicants to include in their marketing applications a written justification with supporting date when terminal sterilization is not used to prepare a sterile drug product. These new provisions are intended to provide the highest possible assurance of sterility for drug products intended to be sterile. Interested parties were given until December 10, 1991, to comment. This document extends for 90 days the time for submission of comments on the proposed rule.

In response to the proposal, the Parenteral Drug Association, Inc. (PDA), requested a 6-month extension of the comment period, the Pharmaceutical Manufacturers Association (PMA) requested a 60-day extension, and the Animal Health Institute (AHI) requested a 90-day extension. In its request for an extension, PDA noted the far-reaching implications of the proposed revisions to the CGMP regulations and the new drug, antibiotic, and new animal drug regulations, and stated that additional time was needed to obtain input from its membership on the significant technical and regulatory issues associated with the proposed rule. PMA requested additional time to adequately consider, evaluate, and respond to the complex issues involved in the proposed rule. AHI requested additional time to prepare a comprehensive response to FDA's assessment of the economic impact of the proposal. FDA has carefully considered the requests and has determined that a 90-day extension to the comment period for the preparation and submission of meaningful comments to this rulemaking is in the public interest. Accordingly, the comment period for submissions by any interested person is extended to March 9, 1992.

Interested persons may, on or before March 9, 1992, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-29334 Filed 12-6-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: This is to advise the public that the U.S. Department of Labor will be changing its regulations to require increased amounts of vehicle liability insurance as mandated by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1841(b)(1)(C). MSPA and the pertinent regulation, 29 CFR 500.121(b), require that the vehicle liability insurance carried by covered employers engaged in transporting migrant and seasonal farmworkers be no less than the amounts established by the Interstate Commerce Commission (ICC) for carriers that transport passengers. The ICC, in accordance with the requirements established by the Department of Transportation, increased the amount of vehicle liability insurance required for passenger common carriers effective November 19, 1985 (49 FR 1991; Jan. 17, 1984). The MSPA vehicle liability insurance requirement, therefore, must also increase by operation of law. The MSPA regulation will be modified so the new, higher insurance requirements are incorporated, and the new regulation will be enforced effective February 1, 1992. The Department is issuing this notice in advance of revising the regulation so as to give all affected persons notice that the new requirement will be incorporated in the Department's regulation. The Department also solicits information and views from the public

on the likely effects of the upcoming change.

DATES: Comments on the likely effects of the increased insurance requirements are due on or before January 8, 1992.

ADDRESSES: Submit written comments to John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Solomon Sugarman, Chief, Branch of Farm Labor Programs, Division of Farm Labor, Child Labor, and Polygraph Standards, Office of Program Operations, Wage and Hour Division, Employment Standards Administration; Telephone (202) 523–7605. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to section 401(b)(3) of MSPA (29 U.S.C. 1841(b)(3)), farm labor contractors, agricultural employers, and agricultural associations who transport migrant and seasonal agricultural workers are required to maintain certain minimum levels of insurance sufficient to satisfy liability for personal injury and damage to property. Section 401(b)(3) of MSPA provides that the required level of insurance shall be at least the amount required for common carriers of passengers under part II of the Interstate Commerce Act (49 U.S.C. 301 *et seq.*), and any successor provision of subtitle IV of title 49, United States Code, and regulations prescribed thereunder. This MSPA statutory directive was implemented in the regulations of the Department of Labor promulgated in 1983 after the enactment of MSPA (29 CFR 500.121(b)). That regulation in part continues to set forth the ICC and Department of Transportation (DOT) insurance requirement in effect at the time that the MSPA regulation was originally promulgated.

However, the insurance requirements under the Interstate Commerce Act were increased through rulemaking by the ICC on January 17, 1984, effective on November 19, 1985. The revised ICC regulation (49 CFR 1043.2(b)(1)(ii)) prescribes minimum insurance requirements for various classes of passenger carriers based on motor vehicle seating capacity:

15 or fewer passengers	$1,500,000
More than 15 passengers	5,000,000

The current (revised) ICC regulation sets a combined minimum coverage requirement for personal injury and property damage, rather than prescribing separate minimum requirements for each of these insurance categories, as was done in the previous DOT regulation incorporated into the MSPA regulation in 1983.

The Department recognizes that the revised ICC insurance minimums apply by operation of law under MSPA and, therefore, must be incorporated into the MSPA regulations. The Department also recognizes that a reasonable transition period is necessary to allow affected members of the public to respond to the change. Therefore, the Department is issuing this notice in advance of revising the regulations to give all affected persons notice that the new requirements will be incorporated in the Department's regulations to be effective February 1, 1992.

Request for Comments on the Effect of the Rule Change on Transportation of Workers

Although the insurance increases are required by law, the Department nevertheless seeks information and comments from the public on how the required increase in liability insurance for the transportation of agricultural workers will affect the transportation and employment of such workers. Therefore, commenters are asked to furnish any data available on the consequences of the liability insurance increase, including the following: The number of workers currently being transported; vehicle liability insurance premium rates before and after the change; the number of farm labor contractors, agricultural employers and agricultural associations that transport workers; the effect on the number of hours and days that workers are employed; and, how the availability of transportation to workers will be affected as a result of the insurance increase.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, DC, on this 2nd day of December, 1991.

John R. Fraser,

Acting Administrator, Wage and Hour Division, Employment Standards Administration.

Wage and Hour Division,

Employment Standards Administration.

[FR Doc. 91–29309 Filed 12–6–91; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-4038-7]

National Emission Standards for Hazardous Air Pollutants Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: Today EPA proposes to stay the effectiveness of subpart FF of 40 CFR part 61, the national emission standards for hazardous air pollutants (55 FR 8292, March 7, 1990), as applied to all sources originally subject to the rule. These sources are chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical manufacturing plants, coke by-product recovery plants, or petroleum refineries.

The Agency is proposing to stay the effectiveness of subpart FF until EPA takes final action on clarifying amendments to Subpart FF. A proposed settlement agreement with members of the regulated community commits the Agency to take final action on or before December 1, 1992. Clarifying amendments to subpart FF will be proposed in a separate action and will not change the basic control requirements of the current rule or the level of public health protection it provides.

DATES: EPA proposes to stay the effectiveness of Subpart FF of 40 CFR Part 61 for all sources subject to this subpart on or before March 7, 1992, until EPA takes final action on proposed amendments to subpart FF of 40 CFR part 61.

Comments. Comments must be received by EPA on or before January 8, 1992.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 19, 1991, a public hearing will be held on December 24, 1991, beginning at 10 a.m. A request for a hearing may be made by calling Ms. Lina Hanzely at (919) 541–5673.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact Ms. Lina Hanzely at (919) 541–5673 by December 19, 1991.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to Air Docket Section (LE–131), Attention, Docket No. A–89–06, U.S.

Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If requested, a public hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Lina Hanzely at (919) 541–5673.

Docket. Docket No. A–89–06, containing supporting information used in developing the proposed action, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric L. Crump, Office of Air Quality Planning and Standards, Chemicals and Petroleum Branch (MD–13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5032.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

On March 7, 1990 (55 FR 8292), EPA promulgated under Section 112 of the Clean Air Act ("the Act"), 42 U.S.C. 7412, national emission standards for hazardous air pollutants (NESHAP) controlling emissions of benzene to the ambient air from waste operations (Subpart FF of 40 CFR part 61). The NESHAP for benzene waste operations is applicable to owners or operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this subpart applies to owners and operators of facilities at which waste management units are used to treat, store, or dispose of waste generated by chemical plants, coke by-product recovery plants, or petroleum refineries.

The Subpart FF NESHAP for benzene waste operations was promulgated under the authority of section 112 of the Act prior to its amendment by the Clean Air Act Amendments of 1990 ("the 1990 Amendments"). Accordingly, the rule was designed to meet NESHAP risk protection goals for protection of public health. The NESHAP risk protection goals and the policy used to develop the benzene waste operations NESHAP were described in the March 7, 1990 notice of final rulemaking (55 FR 8299).

In the analysis performed to support the development of Subpart FF, EPA determined that the NESHAP risk protection goals could be exceeded if benzene emissions from benzene waste operations were not controlled at a subset of all facilities subject to the rule. Rather than require all facilities to install controls, EPA structured the applicability criteria of the rule in a way that would identify those facilities where controls were needed.

The approach selected for the final rule was to base applicability of the control requirements on the total annual benzene quantity (TAB) in wastes managed at a facility. All facilities subject to the rule must identify benzene-containing waste streams and determine certain characteristics, such as benzene concentration, flow rate, and percent water, of these streams at their point of generation. Each facility seeking an exemption from control requirements must then calculate its TAB by summing the annual benzene quantity contained in all streams containing greater than 10 percent water. This value is then compared to a facility threshold cutoff in the rule of 10 megagrams per year. Facilities with a TAB of less than 10 megagrams per year are exempt from the control requirements of subpart FF, but must comply with the reporting and recordkeeping requirements of the rule.

It is critical that facilities seeking to be exempt from control requirements calculate TAB consistent with the intent of the rule as structured to meet the NESHAP risk protection goals. For example, waste treatment is not allowed as a means of lowering a facility's TAB for the purpose of determining applicability of the control requirements (although it is an acceptable means of complying with the control requirements). Also, while benzene in wastes containing less than 10 percent water (which are known to have low benzene emission potential) does not count towards a facility's TAB, if these wastes are mixed with water, the benzene in them should be counted in the TAB.

At those facilities above the 10 megagram per year TAB cutoff, all benzene-containing waste streams (including those with less than 10 percent water) must be controlled unless it is demonstrated that exemption criteria in the rule for individual streams are met. The basic control requirement of the rule is that wastes containing 10 parts per million by weight (ppm) of benzene or greater must be treated to remove or destroy the benzene to below 10 ppm or by 99 percent. In addition, both the treatment process and units in which waste streams are managed prior to treatment must be controlled for benzene air emissions.

The effective date for NESHAP promulgated in 40 CFR part 61 is the promulgation date, and unless a waiver is granted by the Administrator, existing facilities must be in compliance within 90 days of the effective date. In the March 7, 1990 notice of final rulemaking for the benzene waste operations NESHAP, EPA noted that based on comments received on the proposed rule, the complexity of the controls required, and other reasons, the Agency believed that most facilities that must install controls would not be able to comply with the standards within 90 days of the effective date. Therefore, a compliance period of 2 years was granted in the final standards to meet the control requirements of subpart FF. March 7, 1992 would be the last day of this compliance period.

With this notice, EPA is proposing to stay the effectiveness of Subpart FF pursuant to the authority provided by section 10(d) of the Administrative Procedure Act, 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). The applicable legal precedents indicate that an agency may stay a previously promulgated rule under the Administrative Procedure Act by rulemaking, so long as the stay is otherwise in accord with applicable law. Subject to a review of comments received on this notice of proposed stay, EPA would issue a notice of final rulemaking to stay Subpart FF before March 7, 1992, the current compliance deadline for the rule. The rationale for proposing a stay of Subpart FF is presented below.

B. Problems Identified With the Current Rule

Relative to other NESHAP, subpart FF is a complex rule that contains complicated provisions for determining the rule's applicability to facilities and individual waste streams within a facility. The rule was proposed and promulgated in about 1 year under a Court-ordered schedule. Due to this short development time, there was little prior awareness of the requirements of the rule by the affected industries, nor was there a complete prior understanding by EPA of implementation problems that would be faced by industry. In addition, there were changes to the rule between proposal and promulgation.

Following promulgation of the rule, there were indications that the rule was poorly understood by affected facilities. Numerous telephone calls and letters to EPA headquarters and regional offices requested explanation of the rule. These inquiries have continued to the present, and suggest widespread confusion on many key aspects of the rule. Due to the number of inquiries received on the rule, EPA included sessions on the NESHAP

for benzene waste operations in a workshop presented between August 1990 and March 1991 on organic air emissions from waste management operations. This workshop was presented in all 10 EPA regions. Each workshop had 100 to 200 attendees from industry, consulting firms, and State and Federal Governments. Questions and comments by workshop attendees indicated widespread misunderstanding of many provisions of the rule. A common point of confusion is how to estimate TAB for a facility, the basic criterion that determines whether the control requirements of the rule apply. Other evidence of this confusion is discussed below.

Review of 90-Day Reports

Each facility subject to the rule was required to submit a report to EPA within 90 days of March 7, 1990, identifying the regulatory status of all benzene-containing waste streams at the facility. This report was due on June 5, 1990. A review of the reports submitted provided additional evidence of confusion about the rule. For example, some facilities incorrectly reported the benzene content of waste streams after treatment, rather than at the point of generation. In some cases, this apparently resulted from lack of clarity in the rule on the distinction between process and waste treatment units. In other cases, facilities assumed from the language of the rule (but contrary to the Agency's intent) that waste treatment could be used to lower a facility's TAB to below 10 megagrams, thus exempting the facility from the rule's control requirements. It also appears that due to lack of understanding of the rule, facilities either excluded some benzene-containing waste streams from the TAB estimate or simply did not report them at all. This has caused many facilities to conclude that they are not subject to the control requirements of subpart FF, when in fact, EPA intended them to be controlled in order to meet the NESHAP risk protection goals.

Litigation

Several lawsuits have been filed against EPA that focus on lack of clarity in the rule. On May 7, 1990, the American Petroleum Institute (API) filed a petition for review of the promulgated standard (Subpart FF of 40 CFR part 61), in the United States Court of Appeals for the District of Columbia Circuit, *American Petroleum Institute* v. *EPA*, 90-1238 (D.C. Cir.). On the same date, API submitted to the Agency a petition for reconsideration of the rule. The pet tion for reconsideration requests the Agency to review several regulatory options which would, in effect, extend the March 7, 1992 deadline. The basis for the requested extension is the expectation that many facilities will not be in compliance by the deadline due to the magnitude and the complexity of the projects that would need to be undertaken to comply with the NESHAP.

On May 30, 1991, API submitted a supplement to the petition for reconsideration which further detailed API's belief that compliance could not be timely. The supplement also discussed the fact that "there were a number of fundamental issues that could not be resolved by simply reading the preamble and regulation." The API asserted in the supplement that the Agency's views on these issues were not communicated to the affected facilities until approximately a year after the promulgation of the rule. The issues include the definition of "point of waste generation" and the exemption of waste streams containing less than 10 percent water. According to API, clarifications by EPA on these issues have caused facilities which originally believed under their interpretation of the rule that they were not subject to control requirements to become aware that they must install controls, with only 1 year remaining until the compliance deadline.

On June 3, 1991, Conoco Inc. and Sun Refining and Marketing Company (Conoco) filed actions in the United States Court of Appeals for the District of Columbia Circuit, *Conoco Inc. and Sun Refining and Marketing Company* v. *EPA*, 91-1266 (D.C. Cir.), and in the United States District Court for the District of Montana, *Conoco, Inc. and Sun Refining and Marketing Company* v. *EPA*, No. CV-91-113-BLG-RAW (D. Mont.). These suits are focussed on the calculation of TAB for the purpose of determining the applicability of control requirements at five refineries (four Sun refineries and one Conoco refinery). Sun and Conoco originally interpreted the rule as excluding all benzene in organic wastes from the TAB calculation, including benzene in wastes mixed with wastewater. A letter from EPA's Region VIII office, dated April 3, 1991, providing guidance on this issue stated that facilities must "include the benzene in organic waste in the TAB determination, if the organic waste is mixed with wastewater at some point after its generation." On the basis of this clarification by EPA, Sun and Conoco only recently became aware that controls must be installed at the five refineries.

Survey of Petroleum Refineries

Subsequent to API's filing of a lawsuit and petition to reconsider, API conducted two surveys of its member companies to determine the extent of the petroleum refining industry's inability to comply with subpart FF by March 7, 1992. The first survey was conducted to determine the general status of refineries with respect to subpart FF. Responses were received from 132 of 194 refineries. The results of the survey indicated that 66 of the 132 respondents were subject to the control requirements of subpart FF, and that from 40 to 52 of these refineries, representing roughly 50 percent of U.S. refining capacity, would be unable to comply by March 7, 1992.

A second survey was conducted that asked specific questions about the reasons for projected noncompliance. Responses to the survey were received from 112 of the 194 refineries in the United States. Forty-nine of the 112 refineries responding indicated that their TAB was 10 megagrams or greater and that controls must be installed to meet the requirements of Subpart FF. When asked to identify the critical job elements in their schedule to complete installation of controls to meet the requirements of Subpart FF by the compliance date, more than one-third responded that determining the applicability of the rule to the facility and wastes within the facility was a critical element. This indicates the degree to which uncertainty about applicability of the rule has effectively lengthened the time needed by facilities to comply.

Only nine facilities responding to the API survey expected compliance to be attained by March 7, 1992. (Later discussions with these facilities indicated that only six would be in compliance by March 7, 1992.) Based on evidence that the applicability of Subpart FF is not fully understood, EPA believes that this is a conservative assessment of the extent of projected noncompliance caused by lack of clarity in the rule.

C. Rationale for Proposed Stay

Based on the considerations discussed above, EPA has concluded that the language of the current rule is sufficiently unclear on several basic requirements to warrant further action by the Agency to clarify the rule. Furthermore, it is apparent that due to the lack of clarity in the rule regarding applicability determinations, many facilities have incorrectly assumed that controls are not required, and therefore

will not be in compliance by March 7, 1992. It is the Agency's view that to cite these facilities for noncompliance with subpart FF after March 7, 1992 because the rule is not clear would unfairly penalize them. Therefore, the Agency is proposing to stay the effectiveness of subpart FF while clarifying amendments to the rule are proposed and promulgated. A further description of this approach is presented below.

D. Proposed Approach to Resolving Problems With Current Rule

The Agency is proposing to stay the effectiveness of Subpart FF until EPA takes final action on clarifying amendments to the rule. In a proposed settlement agreement with the regulated community, the Agency has committed to take final action regarding subpart FF on or before December 1, 1992. Coincidental with the issuance of a stay, clarifying amendments to Subpart FF would be proposed. These amendments would be proposed under the authority of section 112 of the Act prior to the 1990 Amendments. Following a comment period and consideration of comments on the proposed amendments to subpart FF, a final amended rule would be promulgated and the stay would be removed. Facilities subject to the rule would then have 90 days in which to comply with all provisions of amended subpart FF. Any facility unable to comply with the amended rule within 90 days of promulgation would be eligible to apply for a waiver of compliance for a maximum period of up to 2 years beyond the promulgation date, following the procedures described in the General Provisions to 40 CFR part 61. However, as a condition for any waivers granted for subpart FF, the Agency would seek to obtain an enforceable commitment from the waiver applicant to obtain mitigating environmental benefits to compensate for benzene emissions resulting from delayed compliance. The Agency is preparing detailed guidance describing the type of mitigating benefits to be sought and how waiver applications for this rule will be evaluated. This guidance will be issued in final form prior to the publication of final clarifying amendments to the rule.

The amendments that EPA intends to propose to the Subpart FF would clarify those provisions of the rule that have been the subject of confusion and misinterpretation. Points that the Agency plans to clarify include (1) the distinction between process and waste management units; (2) where waste stream benzene content should be determined for sour water streams managed in sour water strippers at petroleum refineries; (3) that organic wastes mixed with water are included in the estimate of TAB; and (4) how the rule applies to wastes generated intermittantly by maintenance operations.

The clarification of these points will affect the calculation of TAB for many facilities, and, consequently may determine whether they are subject to the control requirements of the rule. The amendments to the rule will be described in detail and proposed for public comment in a separate notice of proposed rulemaking.

E. Merits of Proposed Approach

For several reasons, EPA believes that issuing a limited stay of subpart FF while clarifications to the rule are proposed and promulgated (under the authority of section 112 prior to the 1990 Act Amendments) is the best approach to resolving the lack of clarity now evident in the current rule. First, this approach will maintain the stringency of the current rule and the level of public health and environmental protection it provides. As indicated by the API survey of petroleum refineries, many facilities are unable to comply by the current compliance date. Due to the long lead times needed to design and install the control systems necessary to comply with the rule, EPA expects that facilities will continue their efforts towards compliance even while the rule is stayed. This means that a stay of the rule while clarifications are made will not necessarily result in a greater amount of benzene emissions and exposure than would occur without a stay. Beyond this, the proposed approach offers the opportunity to obtain mitigating environmental benefits, such as reduced benzene emissions from sources within a facility not subject to subpart FF, as a condition for any waivers of compliance issued under § 61.11 of the General Provisions to 40 CFR part 61. These mitigating benefits will compensate for benzene emissions that occur due to delayed compliance, making it possible to realize the health and environmental protection goals of the rule before complete compliance is achieved.

A second benefit of the proposed approach is that it will lead to a resolution of the litigation filed against the EPA on subpart FF. As described in a separate notice of proposed settlement, API, Conoco, and Sun have agreed to dismiss their lawsuits against EPA if clarifying amendments to the current rule are issued following the approach described above. This would remove the current uncertainty concerning the potential outcome of litigation, thereby hastening the installation of controls by facilities and enforcement of the rule by EPA.

A third benefit of the proposed approach to clarifying subpart FF is that it will promote the implementation of comprehensive multimedia compliance programs. One factor identified contributing to the inability of petroleum refineries to comply with benzene waste NESHAP by March 7, 1992 is the broad multimedia compliance approach to environmental control being taken by some facilities. Based on the results of the API survey, nearly three-quarters of the refineries subject to control requirements under subpart FF have developed control strategies to achieve integrated compliance with multiple regulatory requirements. For example, nearly two out of every three refineries stated that their compliance approach was also designed to comply with the RCRA toxicity characteristic rule; about one-third said that compliance was integrated with the RCRA primary sludge rule; and one-third indicated participation in a voluntary program for the early reduction of air toxics. In all, 10 different rules or programs were noted by the respondents as part of integrated multimedia compliance approaches. Many of these approaches involve major design and construction projects, such as the installation of new wastewater collection and treatment systems, that will require time beyond March 7, 1992 to complete.

The EPA recognizes that large facilities such as the petroleum refineries and chemical manufacturing plants subject to subpart FF are also subject to a variety of other regulations addressing releases to air, water, and land. The EPA wishes to encourage facilities to develop comprehensive strategies that address the environmental control needs of all production and waste management units at a plant, and that stress the most efficient and environmentally beneficial long-term solutions. By staying subpart FF while clarifying amendments are proposed and promulgated, the Agency would be indirectly allowing additional time for comprehensive multimedia compliance programs to be completed without the penalties that would be associated with missing the current March 7, 1992 compliance deadline for subpart FF.

Finally, it should be emphasized that the proposed stay would not be open-ended. Rather, it is proposed to extend until clarifying amendments to the rule are promulgated. The Agency intends to expedite development and internal review of the regulatory notices that will propose and promulgate clarifying

amendments to the rule, and is committed by the aforementioned settlement to take final action on the proposed amendments on or before December 1, 1992. This approach will limit the potential for loss of benzene emission reduction and risk protection.

F. Miscellaneous

1. Paperwork Reduction Act

There are no information collection requirements in this proposed rule for a stay of effectiveness.

2. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether this regulation is a "major rule" and therefore subject to certain requirements of the Order. The EPA has determined that issuing a stay for Subpart FF will result in none of the adverse economic effects set forth in Section I of the Order as grounds for finding a regulation to be a "major rule." This regulation should not be considered major because its annual effect on the economy is not expected to exceed $100 million, the regulation does not significantly increase process or production costs, and the regulation does not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

The Agency has not conducted a Regulatory Impact Analysis (RIA) of this proposed regulation because this action does not constitute a major rule.

3. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of the proposed rule on small business entities. However, section 604(b) of the Regulatory Flexibility Act provides that analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule to stay 40 CFR part 61, subpart FF, if promulgated, will have the effect of easing the burdens associated with immediate compliance with subpart FF, and I, therefore, certify that this rule will not have significant economic impact on a substantial number of small entities.

Dated: December 2, 1991.

F. Henry Habicht II,

Acting Administrator.

[FR Doc. 91-29355 Filed 12-5-91; 10:55 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-18

Acquisition of Real Property

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the basic policy under which the General Services Administration (GSA) leases, or delegates to other agencies the authority to lease, space in privately owned buildings. It designates categories of special purpose space which may be acquired by any agency, and specific types of space which may be acquired by specific agencies, for up to 5 years without obtaining authorization from the Administrator of GSA. This proposed rule also defines the limitations on agency use of delegated leasing authority, and the socioeconomic considerations which must be applied by both GSA and delegated agencies when acquiring space by lease.

DATES: Comments must be received on or before: February 7, 1992.

ADDRESSES: Comments should be addressed to: General Services Administration, Office of Real Estate (PQR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Robert E. Ward, Director, Office of Real Estate, Office of Real Property Development, Public Buildings Service, General Services Administration, Washington, DC 20405 (202-501-4266).

Executive Order 12291

GSA has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions on this proposed rule on adequate information concerning the need for and consequences of this proposed rule. GSA has also determined that the potential benefits to society from this proposed rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

List of Subjects in 41 CFR Part 101-18

Real property acquisition; Acquisition of real property by purchase or condemnation.

Accordingly, it is proposed to amend 41 CFR part 101-18 as follows:

PART 101-18—ACQUISITION OF REAL PROPERTY

1. The authority citation for 41 CFR Part 101-18 continues to read as follows:

Authority: 63 Stat. 377 (40 U.S.C. 304c, 471, 490, 601-619); 73 Stat. 479; (40 U.S.C. 490 note); (42 U.S.C. 4201-4244); (40 U.S.C. 531-535); E.O. 11512, 35 FR 3979; 84 Stat. 1894.

2. Subpart 101-18.1 is revised to read as follows:

Subpart 101-18.1—Acquisition by Lease

Sec.

101-18.100 Basic policy.
101-18.101 Acquisition by GSA.
101-18.102 Acquisition by other agencies.
101-18.103 Agency cooperation.
101-18.104 Delegation of leasing authority.
101-18.104-1 Limitations on the use of delegated authority.
101-18.104-2 List of special purpose space.
101-18.104-3 List of special purpose space by agency.
101-18.105 Contingent fees and related procedure.
101-18.106 Application of socioeconomic considerations.

Subpart 101-18.1—Acquisition by Lease

§ 101-18.100 Basic policy.

(a) GSA will lease space in privately owned buildings and land only when needs cannot be satisfactorily met in Government controlled space; when leasing proves to be more efficient than the construction or alteration of a Federal building; or when construction or alteration is not warranted because requirements in the community are insufficient or indefinite in scope or duration, or completion of a new building within a reasonable time cannot be ensured.

(b) Acquisition of space by lease will be on the basis most favorable to the Government, with due consideration to maintenance and operational efficiency, and only at charges consistent with prevailing scales for comparable facilities in the community.

(c) Acquisition of space by lease will be by negotiation except where the sealed bid procedure is required by 41 U.S.C. 253(a). Except as otherwise provided in 41 U.S.C. 253, full and open competition will be obtained among suitable available locations meeting minimum Government requirements.

(d) When acquiring space by lease, the provisions of § 101–17.205 regarding determination of the location of Federal facilities shall be strictly adhered to.

(e) Lease-construction projects required to be authorized in accordance with or in the manner provided by the Public Buildings Act of 1959 will be, to the greatest extent practicable, consistent with State, regional, and local plans, programs, and local zoning regulations; and Governors, local elected officials, and regional comprehensive planning agencies will be consulted in the planning of the proposed development of such projects.

(f) The authority granted herein shall be exercised in accordance with the requirements and limitations of the Federal Property and Administrative Services Act of 1949, as amended, and other applicable statutes and regulations, including the General Services Administration Acquisition Regulation, as amended, to include the Competition in Contracting Act.

§ 101–18.101 Acquisition by GSA.

(a) GSA will perform all functions of leasing building space, and land incidental thereto, for Federal agencies except as provided in this subpart 101–18.1.

(b) Agencies authorized to acquire space by lease may request GSA to perform such leasing functions in specific instances.

(c) Officials or employees of agencies for which GSA will acquire leased space shall at no time, before or after a space request is submitted to GSA or after a lease agreement is made, directly or indirectly contact lessors, offerors, or potential offerors for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services, unless authorized by the Director of the Real Estate Division in the responsible GSA regional office or facility support center.

§ 101–18.102 Acquisition by other agencies.

(a) A Federal agency may lease space in buildings and land incidental thereto, for its use when:

(1) The space is located in any foreign country;

(2) The space is in buildings which are located on the grounds of any fort, camp, post, arsenal, Navy Yard, naval training station, airfield, proving ground, military supply depot, or school, or of any similar facility, of the Department of Defense, unless and to such extent as a permit for its use shall have been issued by the Secretary of Defense or his duly authorized representative;

(3) The space is acquired by the U.S. Postal Service for postal purposes.

(b) The Departments of Agriculture, Commerce, and Defense may lease their own buildings space, and land incidental to its use, and provide for its operation, maintenance, and custody when the space is situated outside an urban center. A list of urban centers follows.

List of Urban Centers

Aberdeen, SD:
Brown County.
Abilene, TX:
Jones County.
Taylor County.
Akron, OH:
Portage County.
Summit County.
Alaska:
The entire State.
Albany, GA:
Dougherty County.
Albany, IL:
Whiteside County.
Albany, OR:
Linn County.
Albany-Schenectady-Troy, NY:
Albany County.
Rensselaer County.
Saratoga County.
Schenectady County.
Alburqerque, NM:
Bernalillo County.
Alexandria, LA:
Rapides Parish.
Allentown-Bethlehem-Easton, PA–NJ:
Lehigh County, PA.
Northampton County, PA.
Warren, NJ.
Altoona, PA:
Blair County.
Amerillo, TX:
Potter County.
Randell County.
Anaheim-Santa Ana-Garden Grove, CA:
Orange, County.
Ann Arbor, MI:
Washtenaw County.
Asheville, NC:
Buncombe County.
Athens, GA:
Clarke County.
Atlanta, GA:
Clayton County.
Cobb County.
De Kalb County.
Fulton County.
Gwinnett County.
Atlantic City, NJ:
Atlantic County.
Augusta, GA–SC:
Richmond County, GA.
Aiken County, SC.
Augusta, ME:
Kennebec County.
Austin, TX:
Travis County.
Bakerfield, CA:
Kern County.
Baltimore, MD:
Baltimore City.
Anne Arundel County.
Baltimore County.
Carroll County.
Howard County.
Baton Rouge, LA:
East Baton Rouge Parish.
Battle Creek, MI:
Calhoun County.
Bay City, MI:
Bay County.
Beaumont-Port Arthur, TX:
Jefferson County.
Orange County.
Billings, MT:
Yellowstone County.
Binghamton, NY–PA:
Broome County, NY.
Tioga County, NY.
Susquehanna County, PA.
Birmingham, AL:
Jefferson County.
Bismarck, ND:
Burleigh County.
Boise, ID:
Ada County.
Boston, MA:
Essex County.
Middlesex County.
Norfolk County.
Plymouth County.
Suffolk County.
Bridgeport, CT:
Fairfield County.
New Haven County.
Brockton, MA:
Bristol County.
Norfolk County.
Plymouth County.
Brownsville-Harlingen-San Benito, TX:
Cameron County.
Buffalo, NY:
Erie County.
Niagara County.
Burlington, VT:
Chittenden County
Butte, MT:
Silver Bow County.
Calexico-El Centro, CA:
Imperial County
Canton, OH:
Stark County.
Casper, WY:
Narrona County.
Cedar Rapids, IA:
Linn County.
Champaign-Urbana, IL:
Champaign County.
Charleston, SC:
Berkeley County.
Charleston, County.
Charleston, WV:
Kanawha County.

Charlotte, NC:
Mecklenburg County.
Union County.
Charlottesville, VA:
Charlottesville City.
Albemarle County.
Chattanooga, TN–GA:
Hamilton County, TN.
Walker County, GA.
Cheyenne, WY:
Laramie County.
Chicago, IL:
Cook County.
Du Page County.
Kane County.
Lake County.
McHenry County.
Will County.
Cincinnati, OH–KY–IN:
Clermont County, OH.
Hamilton County, OH.
Warren County, OH.
Boone County, KY.
Campbell County, KY.
Kenton County, KY.
Dearborn County, IN.
Cleveland, OH:
Cuyahoga County.
Geauga County.
Lake County.
Medina County.
Clinton, OK:
Custer County.
Cody, WY:
Park County.
Colorado Springs, CO:
El Paso County.
Columbia, MO:
Boone County.
Columbia, SC:
Lexington County.
Richland County.
Columbus, GA–AL:
Chattahoochee County, GA.
Muscogee County, GA.
Russell County, AL.
Columbus, OH:
Delaware County.
Franklin County.
Pickaway County.
Concord, NH:
Merrimack County.
Corpus Christi, TX:
Nueces County.
Dallas, TX:
Collin County.
Dallas County.
Denton County.
Ellis County.
Davenport-Rock Island-Moline, IA–IL:
Scott County, IA
Henry County, IL.
Rock Island County, IL.
Dayton, OH:
Greene County.
Miami County.
Montgomery County.
Preble County.
Decatur, IL:
Macon County.
Denver, CO:
Adams County.
Arapahoe County.
Boulder County.
Denver County.
Jefferson County.
Des Moines, IA:
Polk County.
Detroit, MI:
Macomb County.
Oakland County.
Wayne County.
Dubuque, IA:
Dubuque County.
Duluth-Superior, MN–WI:
St. Louis County, MN.
Douglas County, WI.
Durango, CO:
LaPlata County.
Durham, NC:
Durham County.
Elkins, WV:
Randolph County.
El Paso, TX:
El Paso County.
Erie, PA:
Erie County.
Eugene, OR:
Lane County.
Evansville, IN–KY:
Vanderburgh County, IN.
Warrick County, IN.
Henderson County, KY.
Fall River, MA–RI:
Bristol County, MA.
Newport County, RI.
Fargo-Moorhead, ND–MN:
Cass County, ND
Clay County, MN.
Fayetteville, NC:
Cumberland County.
Fitchburg-Leominster, MA:
Middlesex County.
Worcester County.
Flint, MI:
Genesee County.
Lapeer County.
Fort Collins, CO:
Larimer County.
Fort Lauderdale-Hollywood, FL:
Broward County.
Fort Smith, AR–OK:
Crawford County, AR.
Sebastian County, AR.
Le Flore County, OK.
Sequoyah County, OK.
Fort Wayne, IN:
Allen County.
Fort Worth, TX:
Johnson County.
Tarrant County.
Frankfort, KY:
Franklin County.
Fresno, CA:
Fresno County.
Gadsden, AL:
Etowah County.
Gainesville, FL:
Alachua County.
Galveston-Texas City, TX:
Galveston County.
Gary-Hammond-East Chicago, IN:
Lake County.
Porter County.
Grand Forks, ND:
Grand Forks County.
Grand Island, NE:
Hall County.
Grand Junction, CO:
Mesa County.
Grand Rapids, MI:
Kent County.
Ottawa County.
Great Falls, MT:
Cascade County.
Greeley, CO:
Weld County.
Green Bay, WI:
Brown County.
Greensboro-High Point, NC:
Guilford County.
Greenville, SC:
Greenville County.
Pickens County.
Greenwood, MS:
Le Flore County.
Hamilton-Middletown, OH:
Butler County.
Harrisburg, PA:
Cumberland County.
Dauphin County.
Perry County.
Hartford, CT:
Hartford County.
Middlesex County.
Tolland County.
Hawaii:
The entire State.
Helena, MT:
Lewis and Clark County.
Hot Springs, AR:
Garland County.
Houston, TX:
Harris County.
Huntington-Ashland, WV–KY–OH:
Cabell County, WV.
Wayne County, WV.
Boyd County, KY.
Lawrence County, OH.
Huntsville, AL:
Limestone County.
Madison County.
Huron, SD:
Beadle County.
Idaho Falls, ID:
Bonneville County.
Indianapolis, IN:
Hamilton County.
Hancock County.
Hendricks County.
Johnson County.
Marion County.
Morgan County.
Shelby County.
Jackson, MI:
Jackson County.

Jackson, MS:
Hinds County.
Rankin County.
Jackson, TN:
Madison County.
Jacksonville, FL:
Duval County.
Jefferson City, MO:
Cole County.
Jersey City, NJ:
Hudson County.
Johnstown, PA:
Cambria County
Somerset County.
Kalamazoo, MI:
Kalamazoo County.
Kansas City, MO–KS:
Cass County, MO.
Clay County, MO.
Jackson County, MO.
Platte County, MO.
Johnson County, KS.
Wyandotte County, KS.
Kenosha, WI:
Kenosha County.
Klamath Falls, OR:
Klamath County.
Knoxville, TN:
Anderson County.
Blount County.
Knox County.
Lafayette, LA:
Lafayette Parish.
Lake Charles, LA:
Calcasieu Parish.
Lancaster, PA:
Lancaster County.
Lansing, MI:
Clinton County.
Eaton County.
Ingham County.
Laredo, TX:
Webb County.
Las Vegas, NV:
Clark County.
Lawrence-Haverhill, MA–NH:
Essex County, MA.
Rockingham County, NH.
Lawton, OK:
Comanche County.
Lewiston-Auburn, ME:
Androscoggin County.
Lexington, KY:
Fayette County.
Lima, OH:
Allen County.
Lincoln, NE:
Lancaster County.
Little Rock-North Little Rock, AR:
Pulaski County.
Logan, UT:
Cache County.
Lorain-Elyria, OH:
Lorain County.
Los Angeles-Long Beach, CA:
Los Angeles County.
Louisville, KY–IN:
Jefferson County, KY.
Clark County, IN.
Floyd County, IN.
Lowell, MA:
Middlesex County.
Lubbock, TX:
Lubbock County.
Lynchburg, VA:
Lynchburg City.
Amherst County.
Campbell County.
Macon, GA:
Bibb County.
Houston County.
Madison, WI:
Dane County.
Manchester, NH:
Hillsborough County.
Merrimack County.
Manhattan, KS:
Riley County.
McCook, NE:
Red Willow County.
Medford, OR:
Jackson County.
Memphis, TN–AR:
Shelby County, TN.
Crittenden County, AR.
Meriden, CT:
New Haven County.
Meridian, MS:
Lauderdale County.
Miami, FL:
Dade County.
Midland, TX:
Midland County.
Milwaukee, WI:
Milwaukee County.
Ozaukee County.
Waukeska County.
Minneapolis-St. Paul, MN:
Anoka County.
Dakota County.
Hennepin County.
Ramsey County.
Washington County.
Missoula, MT:
Missoula County.
Mobile, AL:
Baldwin County.
Mobile County.
Monroe, LA:
Ouachita Parish.
Montgomery, AL:
Elmore County.
Montgomery County.
Morgantown, WV:
Monongahela County.
Muncie, IN:
Delaware County.
Muskegon-Muskegon Heights, MI:
Muskegon County.
Muskogee, OK:
Muskogee County.
Nashville, TN:
Davidson County.
Sumner County.
Wilson County.
Newark, NY:
Essex County.
Morris County.
Union County.
New Bedford, MA:
Bristol County.
Plymouth County.
New Britain, CT:
Hartford County.
New Haven, CT:
New Haven County.
New London-Groton-Norwich, CT:
New London County.
New Orleans, LA:
Jefferson Parish.
Orleans Parish.
St. Bernard Parish.
St. Tammany Parish.
Newport News-Hampton, VA:
Hampton City.
Newport News City.
York County.
New York, NY:
Bronx County.
Kings County.
Nassau County.
New York County.
Queens County.
Richmond County.
Rockland County.
Suffolk County.
Westchester County.
Norfolk-Portsmouth, VA:
Chesapeake City.
Norfolk City.
Portsmouth City.
Virginia Beach City.
Norwalk, CT:
Fairfield County.
Odessa, TX:
Ector County.
Ogden, UT:
Weber County.
Oklahoma City, OK:
Canadian County.
Cleveland County.
Oklahoma County.
Olympia, WA:
Thurston County.
Omaha, NE–IA:
Douglas County, NE.
Sarpy County, NE.
Pottawattamie County, IA.
Orlando, FL:
Orange County.
Seminole County.
Parkersburg, WV:
Wood County.
Paterson-Clifton-Passaic, NJ:
Bergen County.
Passaic County.
Pensacola, FL:
Escambia County.
Santa Rosa County.
Peoria, IL:
Peoria County.
Tazewell County.
Woodford County.
Philadelphia, PA–NJ:
Bucks County, PA.
Chester County, PA.

Delaware County, PA.
Montgomery County, PA.
Philadelphia County, PA.
Burlington County, NJ.
Camden County, NJ.
Gloucester County, NJ.
Phoenix, AZ:
Maricopa County.
Pierre, SD:
Hughes County.
Pittsburgh, PA:
Allegheny County.
Beaver County.
Washington County.
Westmoreland County.
Pittsfield, MA:
Berkshire County.
Portland, ME:
Cumberland County.
Portland, OR–WA:
Clackamas County, OR.
Multnomah County, OR.
Washington County, OR.
Clark County, WA.
Portsmouth, NH:
Rockingham County.
Providence-Pawtucket-Warwick, RI–MA:
Bristol County, RI.
Kent County, RI.
Newport County, RI.
Providence County, RI.
Washington County, RI.
Bristol County, MA.
Norfolk County, MA.
Worcester County, MA.
Provo-Orem, UT:
Utah County.
Pueblo, CO:
Pueblo County.
Puerto Rico:
The entire Commonwealth.
Racine, WI:
Racine County.
Raleigh, NC:
Wake County.
Rapid City, SD:
Pennington County.
Reading, PA:
Berks County.
Reno, NV:
Washoe County.
Richmond, VA:
Richmond City.
Chesterfield County.
Hanover County.
Henrico County.
Roanoke, VA:
Roanoke City.
Roanoke County.
Rochester, NY:
Livingston County.
Monroe County.
Orleans County.
Wayne County.
Rockford, IL:
Boone County.
Winnebago County.
Rolla, MO:
Phelps County.
Rome, GA:
Floyd County.
Sacramento, CA:
Placer County.
Sacramento County.
Yolo County.
Saginaw, MI:
Saginaw County.
St. Albans, VT:
Franklin County.
St. Joseph, MO:
Buchanan County.
St. Louis, MO–IL:
St. Louis City, MO.
Jefferson County, MO.
St. Charles County, MO.
St. Louis County, MO.
Madison County, IL.
St. Clair County, IL.
Salem, OR:
Marion County.
Polk County.
Salina, KS:
Saline County.
Salisbury, MD:
Wicomico County.
Salt Lake City, UT:
Davis County.
Salt Lake County.
San Angelo, TX:
Tom Green County.
San Antonio, TX:
Bexar County.
Guadalupe County.
San Bernardino-Riverside-Ontario, CA:
Riverside County.
San Bernardino County.
San Diego, CA:
San Diego County.
San Francisco-Oakland, CA:
Alameda County.
Contra Costa County.
Marin County.
San Francisco County.
San Mateo County.
San Jose, CA:
Santa Clara County.
Santa Barbara, CA:
Santa Barbara County.
Santa Fe, NM:
Santa Fe, County.
Savannah, GA:
Chatham County.
Scottsbluff, NE:
Scotts Bluff County.
Scranton, PA:
Lackawanna County.
Seattle-Everett, WA:
King County.
Snohomish County.
Sheridan, WY:
Sheridan County.
Shreveport, LA:
Bossier Parish.
Caddo Parish.
Sioux City, IA–NE:
Woodbury County, IA.
Dakota County, NE.
Sioux Falls, SD:
Minnehaha County.
South Bend, IN:
St. Joseph County.
Marshall County.
Spartanburg, SC:
Spartanburg County.
Spokane, WA:
Spokane County.
Springfield-Chicopee-Holyoke, MA:
Hampden County.
Hampshire County.
Worcester County.
Springfield, IL:
Sangamon County.
Springfield, MO:
Greene County.
Springfield, OH:
Clark County.
Stamford, CT:
Fairfield County.
Steubenville-Weirton, OH-WV:
Jefferson County, OH.
Brooke County, WV.
Hancock County, WV.
Stillwater, OK:
Payne County.
Stockton, CA:
San Joaquin County.
Syracuse, NY:
Madison County.
Onondaga County.
Oswego County.
Tacoma, WA:
Pierce County.
Tallahasse, FL:
Leon County.
Tampa-St. Petersburg, FL:
Hillsborough County.
Pinellas County.
Temple, TX:
Bell County.
Terre Haute, IN:
Clay County.
Sullivan County.
Vermillion County.
Vigo County.
Texarkana, TX-AR:
Bowie County, TX.
Miller County, AR.
Toledo, OH-MI:
Lucas County, OH.
Wood County, OH.
Monroe County, MI.
Topeka, KS:
Shawnee County.
Trenton, NJ:
Mercer County.
Tucson, AZ:
Pima County.
Tulsa, OK:
Creek County.
Osage County.
Tulsa County.
Tuscaloosa, AL:
Tuscaloosa County.
Tyler, TX:
Smith County.

Utica-Rome, NY:
Herkimer County.
Oneida County.
Vallejo-Napa, CA:
Napa County.
Solano County.
Vicksburg, MS:
Warren County.
Virgin Islands:
The entire Territory.
Waco, TX:
McLennan County.
Walla Walla, WA:
Walla Walla County.
Benton County.
Washington, DC-MD-VA:
District of Columbia.
Montgomery County, MD.
Prince Georges County, MD.
Alexandria City, VA.
Fairfax City, VA.
Falls Church, VA.
Arlington County, VA.
Fairfax County, VA.
Waterbury, CT:
Litchfield County.
New Haven County.
Waterloo, IA:
Black Hawk County.
Wenatchee, WA:
Chelan County.
West Palm Beach, FL:
Palm Beach County.
Wheeling, WV-OH:
Marshall County, WV.
Ohio County, WV.
Belmont County, OH.
Wichita, KS:
Butler County.
Sedgwick County.
Wichita Falls, TX:
Archer County.
Wichita County.
Wilkes Barre-Hazleton, PA:
Luzerne County.
Wilmington, DE-NJ-MD:
New Castle County, DE.
Salem County, NJ.
Cecil County, MD.
Wilmington, NC:
New Hanover County.
Winston-Salem, NC:
Forsyth County.
Worcester, MA:
Worcester County.
Yakima, WA:
Yakima County.
York, PA:
Adams County.
York County.
Youngstown-Warren, OH:
Mahoning County.
Trumbull County.
Yuma, AZ:
Yuma County.

(c) Certain other Federal departments/agencies have been granted legislative authority to execute their own leases for space. In such circumstances, GSA approval to acquire leased space is not required and these agencies are not listed here.

§ 101-18.103 Agency cooperation.

The heads of executive agencies shall cooperate with and assist the Administrator of General Services in carrying out his responsibilities respecting office buildings and space; take measures to give GSA early notice of new or changing space requirements; seek to economize in their requirements for space; and continuously review their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities which can be carried on elsewhere without excessive costs or significant loss of efficiency.

§ 101-18.104 Delegation of leasing authority:

Subject to the limitations stated in § 101-18.104-1, agencies are hereby authorized to perform for themselves all functions with respect to the acquisition of space by lease in buildings and land incidental thereto when the following conditions are met:

(a) The space may be leased for no rental, or for a nominal consideration of 1.00 per annum; or

(b) When authority has been requested by an executive agency and a specific delegation has been granted by the Administrator of General Services; or

(c) When categorical delegations have been granted by the Administrator of General Services for particular types of agency activities such as military recruiting offices or space for certain county level agricultural activities. Such activities are included in the special purpose categories listed in § 101-18.104-2; or

(d) The space is found by the Administrator of General Services to be wholly or predominantly utilized for the special purposes of the agency to have custody thereof and is not generally suitable for the use of other agencies (including but not limited to hospitals, housing, mints, manufacturing plants, and penal institutions); and prior approval of GSA has been obtained before an agency initiates a leasing action involving 2,500 or more square feet of special purpose space. (The types of space listed in § 101-18.104-3 have been found to be wholly or predominantly utilized for the special purposes of the agency named and are not generally suitable for the uses of other agencies.) The request for approval and a Standard Form 81 shall be filed with the GSA regional office having jurisdiction in the area of the proposed leasing action as shown in § 101-17.4801.

§ 101-18.104-1 Limitations on the use of delegated authority.

(a) Agencies authorized by this subpart 101-18.1 to perform functions with respect to acquiring space by lease may perform functions only:

(1) When the utilization requirements of part 101-17 have been met; and

(2) In accordance with the authorities in § 101-18.001, § 101-18.100, and applicable provisions of chapters 1 and 101 of this title.

(b) Agencies are authorized to exercise the long-term leasing authority contained in section 210(h)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)) for a period of up to 5 years in the performance of the functions delegated under this subpart 101-18.1 without specific authorization from the Administrator of the General Services.

(c) Agencies have a need for other than temporary parking accommodations in the urban centers listed in § 101-18.102, for Government-owned motor vehicles not regularly housed by GSA, shall ascertain the availability of Government-owned or -controlled parking from GSA in accordance with the procedures outlined in § 101-17.202-2 prior to instituting procurement action to acquire parking facilities or services.

(d) In accordance with section 7(a) of the Public Buildings Act of 1959, as amended (40 U.S.C. 606), agencies must submit a prospectus to the Administrator of General Services for leases involving an average annual rental in excess of $1,500,000 excluding services and utilities. The prospectus level dollar amount may be adjusted annually by the Administrator. The percentage of increase or decrease, which is determined by the Department of Commerce, is calculated by the composite index of construction costs from the previous calendar year. For fiscal years 1992 and 1993, the prospectus level figures will be $1,525,000 and $1,600,000, respectively.

§ 101-18.104-2 List of special purpose space.

Agencies may not exercise the long-term leasing authority contained in section 210(h)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(h)(1)) in the performance of the functions delegated under this

§ 101–18.104–2 for periods in excess of 5 years without specific authorization from the Administrator of the General Services. Subject to the limitations cited in § 101–18.104–1, any agency may acquire the types of space listed in this subpart. Such space may be situated either inside or outside an urban center.

(a) Space to house antennas;

(b) Depots including, but not limited to stockpiling depots and torpedo net depots;

(c) Docks, piers, and mooring facilities;

(d) Fumigation areas;

(e) Garage space held under service contract;

(f) Greenhouses;

(g) Hangars and other airport operating facilities including, but not limited to aircraft storage and repair shops;

(h) Hospitals, including medical clinics;

(i) Housing, temporary, including hotels;

(j) Laundries;

(k) Quarantine facilities for plants, birds, animals;

(l) Ranger stations;

(m) Recruiting facilities for the armed services;

(n) Schools directly related to the special purpose function(s) of an agency;

(o) Storage/depot facilities such as cold storage; self-storage units; lumber, oil, gasoline, shipbuilding materials, and pesticide materials/equipment storage. General purpose warehouse type storage facilities are not included.

§ 101–18.104–3 List of special purpose space by agency.

The types of space listed in this subpart may be acquired by the designated agency. Such space may be situated either inside or outside an urban center.

(a) *Department of Agriculture.* (1) Cotton classing laboratories

(2) Land;

(3) Miscellaneous storage by cubic foot or weight basis;

(4) Office space when required to be located in or adjacent to stockyards;

(5) Space for Agricultural commodities stored in licensed warehouses and utilized under warehouse contracts;

(6) Space utilized in cooperation with State and local governments or their instrumentalities where the cooperating State or local government occupies a portion of the space and pays a portion of the rent (Extension Services).

(7) Plant inspection facilities not to exceed 100 square feet of space to be located at airport and other port facilities.

(b) *Department of Commerce.* (1) Census Bureau: Space required in connection with conducting the decennial census;

(2) Laboratories for testing materials, classified or ordinance devices, calibration of instruments, and atmospheric and oceanic research;

(3) Maritime training stations;

(4) Radio stations;

(5) National Weather Service meteorological facilities.

(c) *Department of Defense.* (1) Air-Force—Civil Air Patrol Liaison Office when required for use incidental to, in conjunction with, and in close proximity to airports;

(2) Armories;

(3) Film library in the vicinity of Washington, DC;

(4) Filter centers;

(5) Leased building at Jackson Mississippi, Air Force Base;

(6) Mess halls;

(7) Ports of embarkment and debarkation;

(8) Post exchanges;

(9) Postal Concentration Center at Long Island City, NY;

(10) Recreation centers;

(11) Reserve training space;

(12) Service clubs;

(13) Testing laboratories;

(14) Troop detachments.

(d) *Department of Energy.* Facilities housing the special purpose or special location activities of the old Atomic Energy Commission.

(e) *Federal Communications Commission.* Monitoring station sites.

(f)) *Department of Health and Human Services.* Laboratories.

(g) *Department of Housing and Urban Development.* Space used for residential and related purposes.

(h) *Department of the Interior.* (1) Space in buildings and land incidental thereto used by field crews of the Bureau of Land Management and the Geological Survey for periods of less than 1 year in remote areas where no other Government agencies are quartered;

(2) Space on Indian reservations;

(3) Space for visitor centers located within the boundaries of National Parks.

(i) *Department of Justice.* (1) U.S. Marshals Office in Alaska and Border Patrol Offices similar in character and utilization to police stations, involving the handling of prisoners, firearms, and motor vehicles, regardless of location;

(2) Space used for storage and maintenance of surveillance vehicles and seized property;

(3) Space used for Community Treatment Centers.

(j) *Office of Thrift Supervision.* Space for field offices of Examining Division required to be located within Office of Thrift Supervision buildings or immediately adjoining or adjacent to such buildings.

(k) *Tax Court of the United States.* Present courtroom in Grand Central Terminal Building, New York, New York.

(l) *Tennessee Valley Authority.* Building space and land incidental thereto, as well as the operation, maintenance, and custody thereof.

(m) *Department of Transportation.* (1) Federal Aviation Administration: Space and land at the Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma; air route traffic control centers, land at airports, and not more than 10,000 square feet of space at airports that is used predominately as general purpose office space in buildings under the jurisdiction of public or private airport authorities;

(2) U.S. Coast Guard: Space for the oceanic unit at Woods Hole, Massachusetts, and space for port security activities.

(n) *Department of the Treasury.* (1) Comptroller of the Currency: Space and land incidental thereto for the use of the Comptroller of the Currency, as well as the operation, maintenance and custody thereof;

(2) U.S. Customs: Aerostat radar facilities to carry out agency mission(s); e.g., facilities located along the Gulf Coast;

(3) U.S. Secret Service: Space to meet statutory protective responsibilities.

(o) *Department of Veterans Affairs.* (1) Guidance and training centers located at schools and colleges;

(2) Space used for veterans hospitals, outpatient and medical related clinics such as drug, mental hygeine, and alcohol.

§ 101–18.105 Contingent fees and related procedure.

The provisions of subpart 3.4 of title 48 with respect to contingent fees and related procedure are hereby made applicable to all negotiated and sealed bid contracts for the acquisition of real property by lease. The convenant shall be appropriately adapted for use in leases of real property for Government use.

§ 101–18.106 Application of socioeconomic considerations.

(a) In acquiring space by lease, agencies will avoid locations which will work a hardship on employees because:

(1) There is a lack of adequate housing for low- and middle-income employees on a nondiscriminatory basis within reasonable proximity, and

(2) the location is not readily accessible from other areas of the community.

(b) Consideration of low- and moderate-income housing on a nondiscriminatory basis for employees and the need for development and redevelopment of areas for socioeconomic improvement will apply to the acquisition of space by lease where:

(1) 100 or more low- or moderate-income employees are expected to be employed in the space to be leased; and

(2) The lease involves residential relocation of a majority of the existing low- and moderate-income work force, a significant increase in their transportation or parking costs, travel time that exceeds 45 minutes to the new location, or a 20 percent increase in travel time if travel time to the present facility already exceeds an average of 45 minutes; or

(3) GSA requests Department of Housing and Urban Development (HUD) review in lease actions of special importance not covered by paragraphs (b) (1) and (2) of this section.

(c) HUD, as the agency responsible for providing information concerning the availability of low and moderate income housing on a non-discriminatory basis in areas where Federal facilities are to be located, shall be consulted when such information is required.

(d) Other socioeconomic considerations described in § 101-19.101 are also applicable to acquisition by lease.

Dated: August 14, 1991.

W. Zoellner,

Acting Commissioner, Public Buildings Service.

[FR Doc. 91-29307 Filed 12-6-91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 447

[MB-058-WN]

RIN 0938-AF75

Medicaid Program; Standards for Defining Disproportionate Share Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: On October 31, 1991, we published in the **Federal Register** a proposed rule entitled "Medicaid Program; Standards for Defining Disproportionate Share Hospitals" (56 FR 56141). It proposed to define standards for disproportionate share hospitals so that hospitals with less than average utilization by Medicaid or low income individuals cannot be included as disproportionate share hospitals under expanded State definitions. Upon further consideration, the Secretary has decided to withdraw this proposed rule.

DATES: This notice of withdrawal is effective on December 6, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Kern, (410) 966-4580.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 4, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: December 4, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-29461 Filed 12-6-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-349, RM-7862]

Radio Broadcasting Services; Hartselle, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Dorsey Eugene Newman, permittee of Station WYAM(FM), Channel 291A, Hartselle, Alabama, seeking the substitution of Channel 291C3 for Channel 291A and modification of his permit accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 291C3 at Hartselle or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for Channel 291C3 at Hartselle are 34-27-09 and 86-42-27.

DATES: Comments must be filed on or before January 27, 1992, and reply comments on or before February 11, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John S. Neely, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-349, adopted November 21, 1991, and released December 4, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st St. NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29414 Filed 12-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-345, RM-7109]

Radio Broadcasting Services; Dade City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Daniel A. and Paula C. Bernath, seeking the allotment of Channel 241A to Dade City, Florida, as that community's first local FM service. Channel 241A can be

allotted to Dade City in compliance with the Commission's minimum distance separation requirements with the site restriction of 5.4 kilometers (3.4 miles) east, in order to avoid short-spacings to Station WMTX (FM), Channel 239C1, Clearwater, Florida, and Station WRXK (FM), Channel 241C, Bonita Springs, Florida. The coordinates for the proposal are North Latitude 28–22–15 and West Longitude 82–08–05.

DATES: Comments must be filed on or before January 24, 1992, and reply comments on or before February 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Daniel A. Bernath, Partner, 7305 Sheryl Hill, Holiday, FL 34691 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–345, adopted November 21, 1991, and released December 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29353 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–344, RM–7856]

Radio Broadcasting Services; Maroa, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by TNT Communications proposing the allotment of Channel 297A at Maroa, Illinois, as the community's first local FM service. Channel 297A can be allotted to Maroa in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) southwest, in order to avoid a short-spacing to Station WPGU(FM), Channel 296A, Urbana, Illinois. The coordinates for this proposed allotment are North Latitude 39–57–12 and West Longitude 89–03–12.

DATES: Comments must be filed on or before January 24, 1992, and reply comments on or before February 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jack D. Fowler, Partner, TNT Communications, 328 Market Street, P.O. Box 1032, Mt. Carmel, Illinois 62863.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–344, adopted November 15, 1991, and released December 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1240(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–29352 Filed 12–6–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Echinacea laevigata (Smooth Coneflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Echinacea laevigata* (smooth coneflower), a perennial herb limited to 19 populations in Virginia, North Carolina, South Carolina, and Georgia, as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Echinacea laevigata* is endangered by collecting, encroachment of woody vegetation, residential and industrial development, highway construction and improvement, and roadside and power line right-of-way maintenance. This proposal, if made final, would implement Federal protection provided by the Act for *Echinacea laevigata*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 7, 1992. Public hearing requests must be received by January 23, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:
Ms. Nora Murdock at the above address (704/665–1195).

SUPPLEMENTARY INFORMATION:

Background

Echinacea laevigata is a rhizomatous perennial herb described by Boynton and Beadle in Small (1903) from material collected in South Carolina in 1888. This coneflower grows up to 1.5 meters tall from a vertical root stock; stems are smooth, with few leaves. The largest leaves are the basal leaves, which reach 20 cm in length and 7.5 cm in width, have long stems, and are elliptical to broadly lanceolate, tapering to the base, and smooth to slightly rough. The mid-stem leaves have shorter stems or no stems and are smaller in size than the basal leaves. The flowers are light pink to purplish, 2 to 2.5 cm broad, and usually solitary. The rays (petal-like structures) usually droop. Flowering occurs from May through July. The fruit is a gray-brown, oblong-prismatic achene, usually four-angled, and 4 to 0.5 mm long; seeds are .5 cm long (Kral 1983, Radford *et al.* 1964, McGregor 1968, Cronquist 1980, Gaddy 1991, and Wofford 1989). The smooth coneflower can be distinguished from its most similar relative, the purple coneflower (*E. purpurea*), by its leaves, which in the smooth coneflower are never cordate like those of the purple coneflower. In addition, the awn of the pale in the smooth coneflower is incurved, while that of *E. purpurea* is straight (Kral 1983, Gaddy 1991, and Wofford 1989).

The reported historical range of *Echinacea laevigata* included Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, Alabama, and Arkansas. The species is now known to survive only in Virginia, North Carolina, South Carolina, and Georgia. Four populations survive in Virginia, six in North Carolina, six in South Carolina, and three in Georgia. Three additional populations in South Carolina (two in Aiken County and one in Allendale County) are believed to have been introduced. The habitat of smooth coneflower is open woods, cedar barrens, roadsides, clearcuts, dry limestone bluffs, and power line rights-of-way on magnesium- and calcium-rich soils associated with limestone (in Virginia), gabbro (in North Carolina and Virginia), diabase (in North Carolina and South Carolina), and marble (in South Carolina and Georgia). Optimal sites are characterized by abundant sunlight and little competition in the herbaceous layer (Gaddy 1991). Natural fires, as well as large herbivores, including elk and bison, are part of the history of the vegetation in this species' range; many of the associated herbs are also cormophytic, sun-loving species, which depend on periodic disturbances to reduce the shade and competition of woody plants (Kral 1983 and Gaddy 1991).

A total of 58 populations of *Echinacea laevigata* have been reported historically from 24 counties in 8 States. The reports from Alabama and Arkansas are now believed to have been misidentifications (Gaddy 1991). Of the 19 remaining populations (located in Pulaski, Montgomery, Campbell, and Franklin Counties, Virginia; Durham and Granville Counties, North Carolina; Oconee County, South Carolina; and Stephens County, Georgia), 7 occur on land managed by the U.S. Forest Service, 2 are on U.S. Army Corps of Engineers lands, 1 is on North Carolina Department of Agriculture land, 1 site is owned by The Nature Conservancy, 1 site is within a right-of-way maintained by the South Carolina Department of Highways and Public Transportation, and the remaining 7 are on privately owned lands. Several of these populations are in or near transmission line corridors of various utility companies or are near highway rights-of-way. Extirpated populations are believed to have succumbed due to the absence of natural disturbance (fire and/or grazing), highway construction and improvement, gas line installation, and residential and industrial development. The continued existence of *Echinacea laevigata* is threatened by these activities, as well as by collecting, herbicide use, and possibly by encroachment of exotic species.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document number 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Echinacea laevigata* was included in that notice as a category 2 species. Category 2 species are those species for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules.

Subsequent revisions of the 1980 notice have maintained *Echinacea laevigata* in category 2. Recently completed status survey work has provided sufficient data to support the current proposal.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Echinacea laevigata* (Boynton and Beadle) Blake (smooth coneflower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Echinacea laevigata* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, 67 percent of the known populations have been extirpated, partly as a result of conversion of habitat for silvicultural and agricultural purposes and for industrial and residential development. Fire suppression appears to be a problem for this species and will be discussed in detail under Factor E below. Of the 39 populations that have been extirpated, one is known to have been eliminated by highway construction, another by construction of a gas pipeline, and a third by conversion of the site to pine plantation. Causes for the extirpation of the others are unknown. Many of the remaining populations are on the edges of highways or utility rights-of-way. The largest population remaining is in Granville County, North Carolina. This population, which contains one-third of the total smooth coneflower plants in existence, occupies a site that has recently been proposed for construction of a regional hazardous waste incinerator. Eleven of the 19 remaining populations are currently declining in numbers of plants; only 7 are considered stable, and 1 is increasing. Eighteen of the remaining 19 populations are currently threatened by habitat alterations (Gaddy 1991).

Half of the remaining populations survive along roadsides.Two

populations remain on utility line rights-of-way, another is along an abandoned railroad right-of-way, and a fourth is on the edge of a motorbike trail in a wooded area. Most of the populations are small, with 10 containing less than 100 plants each. Three of these contain less than 10 plants each. Such small populations are inherently vulnerable to extirpation as a result of highway and right-of-way improvement, particularly if herbicides are used.

The extreme narrowness of geographic range and the scarcity of seed sources, as well as appropriate habitat, increase the severity of the threats faced by *Echinacea laevigata*. As stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing and timber-harvesting operations, if properly done. It cannot withstand bulldozing or direct application of broadleaf herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or by right-of-way maintenance activities if these are not done in a manner consistent with protecting the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Echinacea laevigata*, although it is offered for sale by a few native plant nurseries, is not currently a significant component of the commercial trade in native plants. However, many of the more common native coneflowers are in demand for horticultural use and are a significant part of the commercial trade. Publicity could generate an increased demand of this attractive species, which might exceed the currently available sources of cultivated material. Because of its small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific notoriety.

Overshadowing the potential threat of taking for horticultural purposes is the threat of commercial collection for the pharmaceutical trade. For over a century, Midwestern species in this genus have been harvested and sold in European and American markets under the trade name "Kansas snake root" (McGregor 1968). In Germany alone, over 280 products made from various species of this American genus are registered for medicinal use (Bauer 1990). As stated by Steven Foster (personal communication, 1990):

The potential danger of inadvertent harvest of plants for commercial markets may be the greatest hidden danger to *Echinacea laevigata* * * * we have been able to document that three endemic species have also been harvested without proper attention to species identity in the Midwest. These include the Ozark endemics, *E. paradoxa* and *E. simulata*, as well as *E. atrorubens*.

Documented harvests have reached as high as 200,000 pounds collected from a single Kansas county in 1 year. Given the fact that at least 8 to 10 dried roots are required to make up 1 pound, this single harvest represented the collection of approximately two million roots. Dr. Ronald McGregor, director emeritus of the herbarium at the University of Kansas and the leading authority on the genus *Echinacea* (in Foster 1991), noted drastic declines in Kansas populations of *Echinacea pallida* as a result of commercial harvests in the 5 years prior to 1987. Although most of the commercial supply of *Echinacea purpurea* now comes from cultivated sources, the demand for the roots far outstrips the commercial supply and is resulting in increasing pressure on wild populations of nearly every species in the genus.

In 1987, 7,000 individuals of the Ozark endemic *Echinacea paradoxa* were stolen from a Missouri State park (Wallace 1987). Wallace further stated, "Diggers do not discriminate between species, collecting all *Echinaceas*." Foster (1991) further states:

Unfortunately, a number of the endemic and more unusual *Echinacea* species are entering commercial lots, dug by unwitting harvesters. In the Ozarks, this author has observed *Echinacea simulata*, harvested by the truck load. Roadside populations have decreased dramatically in South Central Missouri. The plant is much less common in northern Arkansas. Commercial harvest of this species from the wild cannot be sustained. If harvested at current levels over the next 10 years, its fate will be extinction.

Although such devastation of *Echinacea laevigata* populations for the commercial pharmaceutical trade has not yet been documented, over two-thirds of the originally known populations of this species are gone. Those remaining are small, easily accessible, and highly vulnerable.

C. *Disease or predation. Echinacea angustifolia* is known to be a host plant for certain species of leaf beetle (family Chrysomelidae) (Wilcox 1979). Beetles in this family have been observed on *Echinacea laevigata* in North Carolina, but it is unknown what effect they have on the plants. At this time there is no known threat to this species from disease.

D. *The inadequacy of existing regulatory mechanisms. Echinacea laevigata* is listed in North Carolina as endangered (Sutter 1990), in South Carolina as threatened (Rayner *et al.* 1984), as threatened in Georgia (McCollum and Ettman 1987), and in Alabama as endangered (Freeman *et al.* 1979). The species is not listed in Virginia.

In North Carolina, *Echinacea laevigata* is afforded legal protection by North Carolina general statutes, § 106-202.122, 106-202.19 (Cum. Supp. 1985). This legislation provides for protection from intrastate trade (without a permit), provides for monitoring and management of State-listed species, and prohibits taking of plants without written permission of landowners. In Georgia the species is afforded legal protection under the Wildflower Preservation Act of 1973, Code of Georgia Ann., title 43, section 43-1801 to 43-1806. Georgia legislation prohibits taking of listed plants from public lands (without a permit) and regulates the sale and transport of plants within the State. Although South Carolina and Alabama recognize this species as threatened and endangered, respectively, neither State offers legal protection for plants. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as exclusion of fire. The Endangered Species Act would provide additional protection and encouragement of active management for *Echinacea laevigata*.

E. *Other natural or manmade factors affecting its continued existence*. As mentioned in "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and of area covered by the plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Much remains unknown about the demographics and reproductive requirements of this species in the wild, although several of the other species in the genus are readily cultivated and grown from seed. A few commercial nurseries specializing in native plants are currently propagating this species and are offering cultivated specimens for sale.

Fire or some other suitable form of disturbance, such as well-timed mowing or careful clearing, is essential to maintaining the glade remnants occupied by *Echinacea laevigata*. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop *Echinacea laevigata*.

which, like most other coneflowers, is intolerant of dense shade. In addition, the species seems to require bare soil for germination of seeds. The current distribution of the species is ample evidence of its dependence on disturbance. Of the 19 remaining populations, 13 are on roadsides, in utility or railroad rights-of-way, or adjacent to trails.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Echinacea laevigata* as endangered. With over two-thirds of the species' populations already having been eliminated and only 19 remaining in existence, and based upon its dependence on some form of active management, it definitely warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing all but one of the remaining populations. The largest population remaining, containing almost a third of the total surviving plants, occupies the site of a proposed regional hazardous waste incinerator.

Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Echinacea laevigata*. As discussed in Factor B in the "Summary of Factors Affecting the Species," *Echinacea laevigata* is threatened by taking, an activity only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of endangered plants from lands under Federal jurisdiction or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Half of the populations are located on Federal land while the rest are on State or private land. Two of the four States with known populations have no restrictions on taking. The other two have limited restrictions—Georgia prohibits taking on public lands without a permit, and North Carolina prohibits taking without permission from the landowner. However, taking provisions are difficult to enforce, regardless of land ownership, and publication of critical habitat descriptions and maps in the **Federal Register** and local newspapers would make *Echinacea laevigata* more vulnerable and would increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be directed through the recovery process and through the section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat for *Echinacea laevigata*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If the species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Echinacea laevigata* and its habitat in the future include, but are not limited to, the following: power line construction, maintenance, and improvements; highway construction, maintenance, and improvements; forest management activities; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Echinacea laevigata* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibited the malicious damage or destruction on Federal lands and the removal, cutting, digging up, damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that some trade permits will be sought because the species is already in cultivation and is a part of the commercial trade in native plants. Commercial sources of cultivated material should be encouraged in order to reduce pressure on wild populations. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the

proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Asheville Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Ms. Nora Murdock (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

(1) The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

(2) It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Echinacea laevigata	Smooth coneflower	U.S.A. (GA, MD, NC, PA, SC, VA)	E		NA	NA

Dated: November 13, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-29400 Filed 12-6-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. II

Taking Marine Mammals Incidental to Fisheries-related Research

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of request for rulemaking and request for information.

SUMMARY: NMFS has received requests from its Regional Officies for authorization to take small numbers of marine mammals incidental to fisheries-related research over the next 5 years. NMFS is requesting information, suggestions, and comments from the public on whether it is appropriate to issue regulations and on the structure and content of those regulations.

DATES: Comments on this request should be received no later than January 8, 1992.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz or Dr. Gerard DiNardo, Office of Protected Resources, NMFS, 301/427-2319.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act (MMPA) directs the Secretary of Commerce to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years, or less, if the Secretary finds that the taking will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. On September 29, 1989, at 54 FR 40349, NMFS and the U.S. Fish and Wildlife Service published a final rule implementing amendments made to the MMPA in 1986, that allow a take of depleted as well as non-depleted marine mammals, and also changed the conditions under which an incidental take is allowed.

Description of Request

NMFS has received requests from its Regional Offices for authorization to take small numbers of marine mammals incidental to fisheries-related research, including research on types of fishing gear. NMFS is considering issuing regulations that will authorize, for the geographic area covered by each Region, incidental takes of marine mammals expected to occur during fishieries research conducted by each Region for a period of 5 years. The regulations would also authorize a take incidential to research in which the Regions are involved by way of cooperative agreements or contracts with states, universities or other investigators.

Information Requested

NMFS requests interested persons to submit comments, information and suggestions concerning the request, the structure, and content of regulations to allow the taking. NMFS will consider this information in developing an environmental assessment, and, if appropriate, proposed regulations allowing the taking of marine mammals incidental to this activity. If NMFS proposes regulations, interested parties will be given an opportunity to comment.

Dated: December 3, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-29299 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 236
Monday, December 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board

AGENCY: ACTION.

ACTION: List of performance review board members.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

DATES: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue NW., room 5101, Washington, DC 20525, (202) 606-5263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance and to make recommendations to the appointing authority concerning the performance of the senior executive as well as recommendations for bonuses. The Performance Review Board will also recommend recertification actions to the appointing authority in accordance with the Ethics Reform Act of 1989.

The incumbents of the following positions will serve as members of the ACTION Performance Review Board.

1. Deputy Director—Chairman.
2. Associate Director for Management and Budget.
3. Executive Officer—Office of the Director.
4. Deputy General Counsel.
5. Deputy Assistant Secretary for Administration, Department of Transportation.

Issued in Washington, DC on December 2, 1991.

Jane A. Kenny,
Director.

[FR Doc. 91-29342 Filed 12-6-91; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 1105-01]

Echosphere International Corp.; Respondent

Summary

Pursuant to the October 29, 1991, Order of the Administrative Law Judge (ALJ), which Order is attached hereto and affirmed by me, Echosphere International Corporation is required to pay a civil penalty of $250,000.

Order

On October 29, 1991, the ALJ entered his order in the above-referenced matter. The Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the order of the ALJ.

This constitutes final agency action in this matter.

Dated: November 29, 1991

Michael P. Galvin,
Acting Under Secretary for Export Administration.

Order

In the Matter of: Echosphere International Corporation, 90 Inverness Circle, Englewood, Colorado 80012, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having initiated an administrative proceeding by issuing a Charging Letter against Echosphere International Corporation (Echosphere International) pursuant to section 13(c) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401-2420 (1991)) (the Act),[1] and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), based on allegations that:

a. On five occasions between on or about May 1, 1986 and on or about December 19, 1986, Echosphere International, through an employee, stated, directly or indirectly, on the Shipper's Export Declaration filed with a United States agency in connection with five exports of U.S.-origin satellite reception equipment from the United States to Mexico, that the shipments were authorized for export by a specified validated export license when, in fact, the license did not authorize the export, thereby committing five separate violations of § 787.5(a)(1)(ii) of the Regulations; and

b. On five occasions between on or about April 28, 1986 and on or about August 12, 1986, the responsible employee of Echosphere International failed to state the validated license number authorizing the shipment on the Shipper's Export Declaration filed with a United States agency in connection with five exports of U.S.-origin satellite reception equipment from the United States to Mexico, thereby committing five separate violations of § 787.5(a)(1)(ii) of the Regulations;

The Department and Echosphere International having entered into a Consent Agreement whereby the Department and Echosphere International have agreed to settle this matter in accordance with the terms and conditions set forth therein; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered, First, that a civil penalty in the amount of $250,000 is assessed against Echosphere International. Echosphere International shall pay the civil penalty in its entirety to the Department within 30 days of service upon it of the Department's final order.

Second, that the Charging Letter, the Consent Agreement, and the final Order issued by the Under Secretary shall be made available to the public.

Third, that this Order as affirmed or modified shall become effective upon entry of the Under Secretary's final Order.

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991)).

Entered this 29th day of October, 1991.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 91-29336 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 1104-01]

Thomas J. Moore; Respondent

Summary

Pursuant to the October 29, 1991, Order of the Administrative Law Judge (ALJ), which Order is attached hereto and affirmed by me, Thomas J. Moore (hereafter Respondent) is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad for a period of three years provided that the three year denial period shall be suspended for so long as Respondent commits no violation of the Act or any regulation, order or license issued under the Act.

Order

On October 29, 1991, the ALJ entered his order in the above-referenced matter The Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Order of the ALJ.

This constitutes final agency action in this matter.

Dated: November 29, 1991.

Michael P. Galvin,

Acting Under Secretary for Export Administration.

Order

In the Matter of Thomas J. Moore, 4030 La Reunion Parkway, Dallas, Texas 75212, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having initiated an administrative proceeding by issuing a charging letter against Thomas J. Moore (Moore) pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (1991)) (the Act),[1] and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), based on allegations that:

a. On four occasions between on or about July 22, 1986 and on or about December 19, 1986, Moore stated, directly or indirectly, on the Shipper's Export Declaration filed with a United States agency in connection with four exports of U.S.-origin satellite reception equipment from the United States to Mexico that the shipments were authorized for export by a specified validated export license when, in fact, the license did not authorize the export, thereby committing four separate violations of § 787.5(a)(1)(ii) of the Regulations; and

b. On six occasions between on or about April 28, 1986 and on or about April 1, 1987, Moore failed to state the validated export license number authorizing the shipment on the Shipper's Export Declaration filed with a United States agency in connection with six exports of U.S.-origin satellite reception equipment from the United States to Mexico, thereby committing six separate violations of § 787.5(a)(1)(ii) of the Regulations;

The Department and Moore having entered into a Consent Agreement whereby the Department and Moore have agreed to settle this matter in accordance with the terms and conditions set forth therein; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered, First, Thomas J. Moore, 4030 La Reunion Parkway, Dallas, Texas 75212, shall, for a period of three years from the date of entry by the Under Secretary for Export Administration (Under Secretary) of the Department's final Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, partnership or business organization with which Moore is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

C. As provided for in § 787.12(a) of the Regulations, without prior disclosure of the facts to the specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States, (b) in any reexport thereof, or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Second, the three-year denial period shall be suspended in its entirety for three years upon entry of the Under Secretary's final Order and shall thereafter be waived, provided that, during the period of suspension, Moore commits no violation of the Act or any regulation, order or license issued under the Act.

Third, that the Charging Letter, the Consent Agreement and the final Order issued by the Under Secretary shall be made available to the public.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the Under Secretary's final Order.

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[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

Entered this 29th day of October, 1991.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 91-29338 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 1103-01]

Steven B. Schaver; Respondent

Summary

Pursuant to the October 29, 1991, Order of the Administrative Law Judge (ALJ), which Order is attached hereto and affirmed by me, Steven B. Schaver (hereafter Respondent) is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad for a period of one year provided that the one year denial period shall be suspended for so long as Respondent commits no violation of the Act or any regulation, order or license issued under the Act.

Order

On October 29, 1991, the ALJ entered his order in the above-referenced matter. The Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Order of the ALJ.

This constitutes final agency action in this matter.

Dated: November 29, 1991.

Michael P. Galvin,

Acting Under Secretary for Export Administration.

Order

In the Matter of Steven B. Schaver 195 Hookand Wierden The Netherlands, Respondent.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having initiated an administrative proceeding by issuing a charging letter against Steven B. Schaver (Schaver) pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991)) (the Act),[1] and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), based on allegations that:

a. On or about May 1, 1986, Schaver caused, counseled or induced the export of U.S.-origin satellite reception equipment from the United States to Mexico without the validated license required by § 772.1(b) of the Regulations and thereby committed one violation of § 787.2 of the Regulations; and

b. On or about May 1, 1986, Schaver stated, directly or indirectly, on the Shipper's Export Declaration filed with a United States agency in connection with the export identified in paragraph a. that the shipment was authorized for export by a specified validated export license when, in fact, the license did not authorize that export and thereby committed one violation of § 787.5(a)(1)(ii) of the Regulations.

The Department and Schaver having entered into a Consent Agreement whereby the Department and Schaver have agreed to settle this matter in accordance with the terms and conditions set forth therein; and

The terms of the Consent Agreement having been approved by me;

It is therefore ordered, First, Steven B. Schaver, 195 Hookand, Wierden, The Netherlands, shall, for a period of one year from the date of entry by the Under Secretary for Export Administration (Under Secretary) of the Department's final Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, partnership or business organization with which Schaver is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

C. As provided for in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States, (b) in any reexport thereof, or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

Second, the one-year denial period shall be suspended in its entirety for one year upon entry of the Under Secretary's final Order and shall thereafter be waived, provided that, during the period of suspension, Schaver commits no violation of the Act or any regulation, order or license issued under the Act.

Third, that the Charging Letter, the Consent Agreement and the final Order issued by the Under Secretary shall be made available to the public.

Fourth, that this Order, as affirmed or modified, shall become effective upon entry of the Under Secretary's final Order.

Entered this 29th day of October, 1991.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 91-29337 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DT-M

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991)).

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Kush Industries, Inc. dba Hamilton Specialties	55 Messina Drive, Braintree, MA 02184	10/17/91	Mechanical scales.
JUDCO Manufacturing, Inc.	1429 240th Street, Harbor City, CA 90710	10/17/91	Automotive electrical switches and harnesses and tooling for all parts.
Timesavers, Inc.	5270 Hanson Court, Minneapolis, MN 55429-3111.	10/18/91	Wide belt abrasive sanding machines for woodworking.
Sport Pillows, Inc.	Route 3 North, Plymouth, NH 03264	10/22/91	Sport pillows.
Dispak Enterprises, Inc.	1615 Distribution Drive, Burlington, KY 41005	10/25/91	Machinery & equipment strapping machines.
Westmoor, Ltd.	West Hamilton Avenue, Sherrill, NY 13461	10/25/91	Milking machines and positive displacement rotary vane pumps.
SPCL EFX	860 Halekauwila Street, Honolulu, HI 96813	11/04/91	Tee shirts.
Waterlox Chemical & Coatings Corporation	9808 Meech Avenue, Cleveland, OH 44105	11/06/91	Paints, varnishes, and finishes in an aqueous medium, based on acrylic or vinyl polymers.
A.P.S. Machine & Tool, Inc.	4848 W. 130 Street, Cleveland, OH 44135-5163	11/06/91	Parts for casting machines other than die-casting machines.
Tri-State Manufacturing Company, Inc.	11605 North Lebanon Road/Box 5, Loveland, OH 45130.	11/06/91	Fireworks.
Foss Plating Company, Inc.	8140 Secura Way, Santa Fe Springs, CA 90670	11/08/91	Automotive and truck accessories.
Miss Jo Ann, Inc.	8115 Lankershim Boulevard, North Hollywood, CA 91605.	11/13/91	Knit dresses of wool, rayon, or combination.
Applied Technologies, Inc.	6395 Gunpark Drive #E, Boulder, CO 80301	11/13/91	Anemometer.
T & R Lumber Company	12940 Whittram Avenue, Rancho Cucamonga, CA 91739.	11/15/91	Redwood and cedar products (tree boxes, stakes, trellises and fencing materials).
California Manufacturing Company	2270 Weldon Parkway, St. Louis, MO 63146	11/15/91	Men's and Boys' Outerwear.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 4015A, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 2, 1991.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 91-29332 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

[A-588-038]

Bicycle Speedometers From Japan; Determination Not To Revoke the Finding and Termination of Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke the antidumping finding and termination of administrative review.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on bicycle speedometers from Japan. Further, the Department has now determined to terminate the administrative review of this finding, with respect to Sanyo Electric Co., Ltd. (Sanyo), and the period November 1, 1989 through October 31, 1990.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1991, the petitioner in the original investigation of bicycle speedometers from Japan, the Stewart-Warner Corporation, notified the Department of Commerce (the Department) that it had no further interest in this antidumping duty order. In response, on August 16, 1991, the Department published in the **Federal Register** (56 FR 40864) a notice of "Determination to Revoke Antidumping Finding and Intent to Terminate Administrative Review," and provided interested parties an opportunity to comment. The Department may revoke an antidumping finding if it concludes that the finding is no longer of interest to interested parties. 19 CFR 353.25(d)(1)(i).

At that time, the Department had no knowledge of interested parties that were opposed to the revocation. Additionally, the Department determined at that time to terminate the administrative review of Sanyo because the effective date of the revocation would have predated the period of review.

On September 9, 1991, Avocet, Inc., a domestic manufacturer of electronic bicycle speedometers, objected to the Department's intent to revoke the antidumping finding, but stated that it had no objection to the Department's intent to terminate the administrative review of Sanyo. On October 7, 1991, in response to the objection to revocation of Avocet, Sanyo formally withdrew its request that the Department conduct an administrative review for the period.

Although generally a request for review must be withdrawn not later than 90 days after the date of publication of the notice of initiation of the requested review, the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. 19 CFR 353.22(a)(5). Given the acquiescence of both the domestic interested party and the respondent to the termination, the fact that no significant work has been undertaken on the review, and the unusual circumstances presented here, we deem it reasonable to extend the time limit in this case and allow withdrawal.

Accordingly, the Department had determined not to revoke this finding and to terminate the administrative review of Sanyo. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: November 29, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-29402 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-455-001]

Electric Golf Cars From Poland; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from an importer, the Department of Commerce (the Department) has conducted an administrative review of the antidumping finding on electric golf cars from Poland. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1976 through June 10, 1980.

The finding in this case was revoked on August 5, 1980, effective for entries made on or after June 11, 1980; however, a review for this period has not been completed and entries remain unliquidated. In this review, we have preliminarily found a margin of 8.07 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois, Steven D. Presing, or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/4106.

SUPPLEMENTARY INFORMATION:

Background

The antidumping finding on electric golf cars from Poland was published on November 18, 1975 (40 FR 53383). The finding was revoked on August 5, 1980 (45 FR 52780), effective for entries made on or after June 11, 1980. On August 13, 1985, the Department published regulations setting forth that administrative reviews would be conducted only when requested by interested parties (19 CFR 353.53a, 50 FR 32556). On October 30, 1985, Melex (USA) (Melex), a wholly-owned subsidiary of the manufacturer, Pezetel, Ltd. (Pezetel), timely requested an administrative review of the antidumping finding. We initiated the review on April 18, 1991 (56 FR 15856), which covers the period July 1, 1976 through June 10, 1980. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act) (19 U.S.C. 1675).

Scope of the Review

Imports covered by the review are electric golf cars, both 3-wheel and 4-wheel, from Poland. During the review period, such merchandise was classifiable under items 657.2560 and 692.1090 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item number 8703.10.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Pezetel, a manufacturer/exporter of Polish electric golf cars to the United States, and the period July 1, 1976 through June 10, 1980.

United States Price

We calculated United States price based on both purchase price (PP) and exporter's sales price (ESP), in accordance with sections 772 (b) and (c) of the Tariff Act. ESP was used in each case when the sales to the first unrelated purchaser took place after importation into the United States.

We calculated ESP based on packed, delivered prices in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, ocean freight, marine insurance, customs duty, U.S. inland freight, warranty, and imputed credit.

We calculated PP based on a packed, delivered price to unrelated customers in the United States. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, foreign inland insurance, ocean freight, marine insurance, customs duty, and U.S. inland freight.

Foreign Market Value

In accordance with section 771(18) of the Tariff Act, Poland is a nonmarket economy (NME) for the purpose of this administrative review. None of the parties to the proceeding are contesting such treatment in this review, and we have calculated foreign market value (FMV) in accordance with 773(c) of the Tariff Act. For NMEs, the Tariff Act requires that FMV be based, to the extent possible, on a valuation of the factors of production in a market economy country that is at a level of economic development comparable to that of the NME country and that is a significant producer of comparable merchandise. For purposes of this administrative review, the Department has used Spain as the surrogate country.

In 1977 Pezetel contracted with an independent Spanish consulting firm, Crea, S.a. (Crea), to perform a cost study of manufacturing a golf car in Spain. After evaluating the golf car production process employed at the Pezetel's WSK factory located in Mielec, Poland, Crea located factories in Spain with a similar organization and manufacturing processes. Based on the Polish factors of production, Crea determined what the costs would be if Pezetel were to

manufacture golf car in Spain. Using this study and data from the similar Spanish factories, we valued the Polish factors of production in Spain to derive constructed value (CV). We adjusted Crea's data to reflect the effects of inflation, exchange rate fluctuations, product differences, and actual production quantity differences.

Inflation

Crea's study was based on 1977 production of 3-wheel golf cars. To arrive at 1976, 1978, 1979, and 1980 costs, we made adjustments to the 1977 figures to account for inflation and deflation. We adjusted the 1977 figures by using the wholesale price index (WPI) for Spain during the period of review. An inflation factor based on the WPI was applied to the 1977 information to arrive at the 1978 through 1980 figures and, likewise, a deflation factor based on the WPI was applied to arrive at the 1976 figures.

Exchange Rate Fluctuation

Currency conversions were made in accordance with section 522 of the Tariff Act and §§ 353.60(a) and 353.50(b) of the Department's regulations. We calculated CV at a time prior to the date of sale to the first unrelated party in the United States. We converted CV from pesetas to U.S. dollars at the exchange rate in effect on the date of the U.S. sale.

Product Differences

Because this administrative review covers both 3- and 4-wheel golf cars and Crea's study focused exclusively on 3-wheel golf car production, we had to derive 4-wheel production figures. We calculated the 4-wheel costs by applying, as best information available (BIA), E–Z–Go's (the petitioner) 1976 ratio of cost of production for 4-wheel golf cars to its cost of production for 3-wheel golf cars, to our calculated CV for 3-wheel golf cars for each year under review (see petitioner's letter dated October 25, 1991, available in room B–099, Department of Commerce, Main Building).

In addition, Crea's study allocated overhead costs based on a 10,000-unit-of-production model. We adjusted Crea's figures by re-allocating overhead costs based on Pezetel's actual production quantities for each year under review.

Constructed Value

Constructed value was calculated, based on Crea's study, as the sum of the cost of materials, labor, overhead, selling, general, and administrative expenses, and profit. We used the statutory minimum of ten percent for selling, general and administrative expenses because the calculated figures were less than the statutory minimum. For profit we used the statutory minimum of eight percent because we are unable to determine respondent's actual profit relating to golf car sales.

For purchase price comparisons, we added to FMV U.S.imputed credit and warranty expenses.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a margin of 8.07 percent exists for Pezetel for the period July 1, 1976, through June 10, 1980

The Department shall determine, and the Customs Service shall assess, antidumping duties on all entries made during the period of review. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. Since the antidumping finding was revoked in 1980, this review was undertaken to determine assessed duties for entries made during the period of review. No cash deposits will be required for future entires of electric golf cars from Poland.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication of the first workday thereafter. Case briefs from interested parties may be submitted not later than 14 days before the date of the hearing. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such case briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 29, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

FR Doc. 91–29403 Filed 12–6–91, 8:45 am]

BILLING CODE 3510–DS–M

[A–570–807]

Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Lim or David Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4087 or (202) 377–4136, respectively.

Amended Final Determinations

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on October 18, 1991, the Department made its final determinations that oscillating fans and ceiling fans from the People's Republic of China (PRC) are being sold in the United States at less than fair value (56 FR 55271, October 25, 1991).

After publication of our final results, respondents in the oscillating fans investigation, Esteem Industries Ltd./HASM Manufacturing Co., Ltd./Holmes Products Corp. ("Esteem") and Wuxi Electric Fan Factory ("Wuxi") and respondents in the ceiling fans investigation, CEC Electrical Manufacturing (International) Company, Ltd./CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc. ("CEC") and Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd. ("Wing Tat") alleged that the Department committed certain ministerial errors in calculating their final margins. We have determined that ministerial errors were committed with respect to Wuxi and CEC. (See company specific memoranda from Richard W. Moreland to Francis J. Sailer, dated November 6 and November 15, 1991.) For both Wuxi and CEC, the Department used certain incorrect costs when valuing the respondents' factors of production.

We are amending the final results of the antidumping duty investigations of oscillating fans and ceiling fans from the PRC to correct these clerical errors in the calculations for Wuxi and CEC. The correct cash deposit rate for Wuxi is 0.35 percent (*de minimis*), and Wuxi is therefore excluded from this order. The correct cash deposit rate for CEC is 2.47 percent. The correct cash deposit rate for the "all others" category of

producers/exporters of oscillating fans is 0.79 percent. The correct cash deposit rate for producers/exporters of ceiling fans is 2.05 percent.

Scope of Orders

The products covered by these orders constitute two separate classes or kinds of merchandise: (1) Oscillating fans; and (2) ceiling fans.

Oscillating fans are electric fans that direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self-contained electric motor of an output not exceeding 125 watts.

Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation.

Window fans, industrial oscillating fans, industrial ceiling fans, and commercial ventilator fans are not included within the scope of these investigations. Furthermore, industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: A maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air delivery capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-mounted electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only—no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which oscillating fans are classifiable is 8414.51.0090. The HTS subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Antidumping Duty Orders

On December 2, 1991, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that such imports materially injure the respective U.S. industries.

Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of oscillating fans (except for those of Durable, Polaray, and Wuxi) and ceiling fans (except for those of Shell and Xinhui) from the PRC. These antidumping duties will be assessed on all unliquidated entries of oscillating fans and ceiling fans from the PRC entered, or withdrawn from warehouse, for consumption on or after June 5, 1991, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (56 FR 25664). With respect to oscillating fans of Wuxi, we are instructing the U.S. Customs Service that any cash deposit or bond collected should be released or refunded.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturer/producer/exporter	Margin percentage
I. Oscillating fans:	
Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries.	0.22 (excluded).
Esteem Industries Ltd./HASM Manufacturing Co., Ltd./Holmes Products Corp.	0.79.
Polaray Industrial Corporation/Paragon Industries (China) Inc./Polaray Industrial (Hong Kong) Corporation, Ltd.	0.00 (excluded).
Wuxi Electric Fan Factory	0.35 (excluded).
All others	0.79.
II. Ceiling fans:	
CEC Electrical Manufacturing (International) Company, Ltd./CEC Industries (Shenghen) Ltd./CEC (USA) Texas Group, Inc.	2.47.
Shell Electric Mfg. (China) Co./SMC Electric Mfg. (Sian Hua) Co./SMC Marketing Corporation.	0.47 (excluded).
Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd.	1.65.
Xinhui Electric Motor Factory/Guangdong Machinery and Equipment Import & Export Corp.	0.00 (excluded).
All others	2.05.

This notice constitutes antidumping duty orders with respect to oscillating fans and ceiling fans from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Maine Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: December 3, 1991

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91-29404 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C 552). Comments should refer to this application as "Export Trade Certificate

of Review, application number 90–3A005."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 90–00005, which was issued on August 10, 1990 (55 FR 33740, August 17, 1990), and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990) and January 29, 1991 (56 FR 4601, February 5, 1991). The applicant has requested expedited review of the application for amendment pursuant to 15 CFR 325.8.

Summary of the Application

Applicant: California Kiwifruit Commission and California Kiwifruit Exporters Association ("CKC") 1540 River Park Drive, suite 110, Sacramento, California 95815, Contact: Dale A. Stern, Esquire, Telephone: (916) 448–3826.

Application No.: 90–3A005.

Date Deemed Submitted: November 26, 1991.

Request for Amended Conduct

CKC seeks to amend its Certificate to:

1. Add the following two companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Murrah Packing, Inc., Gridley, California; and Kiwi Sales of California, Gridley, California; and

2. Delete Calavo Growers of California, Santa Ana, California; Riverbend Sales Inc., Sanger, California; Davis Kiwi Gardens, Inc., Porterville, California; Kiwi Blossom Packing, Gridley, California; Sun Fresh Marketing, Delano, California; and Visalia Produce Sales, Visalia, California as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1));

Dated: December 4, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–29405 Filed 12–6–91; 8:45 am]

BILLING CODE 3510–DR–M

Short-Supply Review: Certain 13-Chrome Stainless Steel Tubing

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain sizes of 13-chrome stainless steel tubing.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for a total of 286 metric tons of certain sizes of 13-chrome stainless steel tubing, 216 metric tons of which will be used on offshore oil wells and 70 metric tons of which will be used as replacement tubing in oil wells in Louisiana for the first quarter 1992 under the U.S.-Japan Steel Arrangement.

SHORT-SUPPLY REVIEW NUMBER: 60.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain sizes of 13-chrome stainless steel tubing. On November 27 and 29, 1991, the Secretary received adequate petitions from Sooner Pipe & Supply Corporation ("Sooner"), requesting short-supply allowances for 216 metric tons and 70 metric tons of this product, respectively, for the first quarter of 1992, under paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America concerning Trade in Certain Steel Products (U.S.-Japan Steel Arrangement). Sooner is requesting short supply because it alleges that the requested product is not produced domestically and because its potential foreign supplier has insufficient export licenses available.

The requested 13-chrome stainless steel tubing meets the following specifications:

13-Chrome Stainless Steel Tubing Grades SM13CR–85 and SM13CR–95 with Vam Ace Connections.

	Quantity
1. SM13CR–85 O.D. 2⅞" × 4.60Lb/Ft × 4–2 Van Ace.	42 MT
2. SM13CR–85 O.D. 2⅞" × 6.40Lb/Ft × R–2 Vam Ace.	174 MT
Total	216 MT
3. SM13CR–85 O.D. 2⅞" × 7.70Lb/Ft × R–2 Vam Ace.	52 MT
4. SM13CR–95 O.D. 2⅞" × 7.70Lb/Ft × R–2 Vam Ace.	17 MT
5. SM13CR–95 O.D. 2⅞" × 7.70Lb/Ft Vam Ace: 1 set of pup joints.	1 MT
6. SM13CR–95 O.D. 2⅞" × 7.70Lb/Ft Vam Ace 1 piece Double Pin Sub 2 feet long.	70 MT
Total	

Chemical Composition:

C: 0.15 —0.22
MN: 0.25 —1.00
CR 12.00 —14.00
NI: MAX. 0.50
CU MAX. 0.25
SI MAX. 1.00

	PSI SM85 grade	PSI SM95 grade
Mechanical properetes:		
Min. Yield Strength	85,000	95,000
Max. Yield Strength	100,000	110,000
Min. Tensile Strength	100,000	105,000

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel products was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than December 27, 1991.

Comments

Interested parties wishing to comment upon this review must send written comments not later than December 16, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must

reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Laurie Lucksinger, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–1382 or (202) 377–3793.

Dated: December 4, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91–29406 Filed 12–6–91, 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review: Certain Seamless Casing and Tubing

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain seamless casing and tubing.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 59.4 net tons of certain seamless casing and tubing for the first quarter of 1992 under paragraph 8 of the U.S.-Japan steel arrangement.

SHORT SUPPLY REVIEW NUMBER: 61.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain seamless casing and tubing. On November 29, 1991, the Secretary received an adequate petition from Kawasaki Thermal Systems, Inc. ("KTS") requesting a short-supply allowance under paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, for 59.4 net tons of modified API 5CT seamless L80 casing and tubing for the first quarter of 1992. KTS requests the following quantities of three different sizes of seamless L80 casing and tubing: 17.2 net tons of seamless casing that is 5½ inches in diameter and weighs 15.5 pounds per foot, 18.9 net tons of seamless casing that is 5½ inches in diameter and weighs 17 pounds per foot, and 23.3 net tons of seamless tubing that is 4 inches in diameter and weighs 10.5 pounds per foot. KTS is requesting a short-supply allowance because it believes this product is not available in the United States and its potential foreign suppliers have insufficient regular export licenses available during this period.

The requested product meets the following specifications:

Scope. This specification states the requirements for seamless casing and tubing.

Chemical Composition:

Carbon—0.23 minimum to 0.28 maximum
Manganese—1.20 minimum to 1.50 maximum
Silicon—0.20 minimum to 0.40 maximum
Aluminum—0.07 maximum
Phosphorus—0.03 maximum
Sulfur—0.03 maximum
Iron—Balance

Mechanical Properties:

Ultimate strength: 95,000 Psi minimum
Yield strength: 80,000 Psi minimum to 95,000 Psi maximum
Ductility: 18.5 percent
Maximum hardness: 23 HRc

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exists with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than December 27, 1991.

Comments

Interested parties wishing to comment upon this review must send written comments not later than December 16, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after December 16, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the Untied States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–1386 or (202) 377–1390.

Dated: December 3, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 91–29407 Filed 12–6–91; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–165. *Applicant:* University of Houston-University Park, Purchasing Department, 4800 Calhoun Road, Houston, TX 77204–5383. *Instrument:* ALV–5000 Multiple-Tau Digital Correlator and ALV–25 Goniometer. *Manufacturer:* ALV-Laser Vertriebs GmbH, Germany. *Intended Use:* The instrument will be used for studies of polymers, solutions and gels and suspensions of polymeric and inorganic colloids. The objective of these studies is to understand the kinetics and dynamics of the formation of complex fluids structures so that these fluids may be tailored to specific desired characteristics. In addition, the instrument will be used in physics courses to train students how to collect, analyze and interpret light scattering intensity data on complex fluids. *Application Received By Commissioner of Customs:* November 12, 1991.

Docket Number: 91–166. *Applicant:* University of Illinois at Chicago, Purchasing Division, 809 S. Marshfield, Chicago, IL 60612. *Instrument:* Low Pressure Chemical Vapor Deposition System. *Manufacturer:* Process Technology, Canada. *Intended Use:* The instrument will be used for studying optical waveguides. Novel structures will be fabricated and their mechanical properties measured. Integrated circuits, sensors etc., will be fabricated using this equipment. One objective of the research will be to discover which optical waveguide configuration has the lowest loss. Another object of the research will be an exploration of novel structures that can be fabricated. *Application Received By Commissioner of Customs:* November 14, 1991.

Docket Number: 91–167. *Applicant:* The University of Texas Medical Branch, 301 University, Galveston, TX 77550. *Instrument:* 3-Dimensional Micromanipulators, Models WR–91–R and WR–91–L. *Manufacturer:* Narishige, Japan. *Intended Use:* The instrument will be used for studies of the neurophysiology of neurons in vitro with the objective of identifying the neurotransmitters used in the optokinetic system. *Application Received By Commissioner of Customs:* November 14, 1991.

Docket Number: 91–168. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Scanning Electron Microscope, Model JSM–6400. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument will be used to study corrosion phenomena that occur in materials exposed to simulated environments of power producing systems. The materials include metallic alloys, structural ceramics, coatings and surface modified layers. Specifically, the instrument will be used to identify the type, chemical composition, and thickness of corrosion product layers and analyze development of precipitate phases and their distribution. *Application Received By Commissioner of Customs:* November 15, 1991.

Docket Number: 91–170. *Applicant:* University of California, Berkeley, Department of Physics, Berkeley, CA 94720. *Instrument:* Mass Spectrometer, Model 5400. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used to characterize rocks and minerals from surface and drill-core sampling according to their content of magmatic, atmospheric, radiogenic, nucleogenic and cosmogenic noble gas isotopes as a means of studying diverse geological processes. *Application Received By Commissioner of Customs:* November 15, 1991.

Docket Number: 91–171. *Applicant:* Howard Hughes Medical Institute, Center for Neural Science, New York University, 4 Washington Place, room 809, New York, NY 10003. *Instrument:* (4) Micromanipulators, Models SM–11–8–B and SM–15–B. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* The instruments will be used for research which concerns the function and development of the visual system, especially the visual areas of the primate cerebral cortex. There are two broad groups of studies. The first concerns the analysis of the functional properties of single neurons in the extrastriate visual areas of the macaque monkey's cerebral cortex, with a special emphasis on the roles of those areas in processing of information about visual motion, space, form and color. The second group concerns the development of visual function and of the cortical visual system in monkeys, and the way that development is affected by abnormal early visual experience. *Application Received By Commissioner of Customs:* November 20, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–29408 Filed 12–6–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council (Council) will hold its 75th public meeting on December 17–18, 1991, beginning at 9 a.m. on both days. The meeting will be held at the Pagoda Hotel, 1525 Rycroft Street, Honolulu, Hawaii. The Council's Standing Committees will also meet at the Pagoda Hotel on December 16 at 8 a.m.

AGENDA: The Council will hear reports from islanders and government fisheries representatives from American Samoa, Guam, Hawaii and the Northern Mariana Islands. The status of Fishery Management Plans (FMPs) covering crustaceans, bottomfish/seamount groundfish, precious corals and pelagics will be discussed. The Council will hear and discuss reports from Council Standing Committees (i.e., Fishery Rights of Indigenous People, Ecosystems, Enforcement, Executive, Budget and Program, Crustaceans, Bottomfish/Seamount Groundfish, and Pelagics).

The Council will also discuss and take action, as appropriate, on the following:

Crustaceans

1. Status of Northwestern Hawaiian Islands lobster fishery.

2. Status of Amendment 7 (limited entry and effort reduction).

Bottomfish

1. Status of State of Hawaii management action in the Main Hawaiian Islands (MHI).

2. Report on fishing activity in the seamount groundfish fishery.

Pelagics

1. 1990 Annual Report

2. Report on longline permits, logbook and observer data.

3. Moratorium on new entry in the Hawaii longline fishery (Amendment 4).

a. Report on limited entry program.

b. Report on permits issued and transferred.

c. Pelagic Review Board recommendations.

d. Status of logbook data collection program.

4. Longline area closures in Guam and the Main Hawaiian Islands (Amendment 5)

a. Status of Amendment 5 package.

b. Information on impact of closures.

c. Exemptions to closures.

d. Requests for modifications of MHI closures.

5. Including tuna in the FMP (Amendment 6).

6. Catch and effect information from all user groups.

7. Request for Ika-shibi limited entry program.

Other

1. Drift gillnet fishing—South Pacific and North Pacific.
2. Vessel Tracking Program—system characteristics, funding, timeframe.
3. Tuna and billfish research and management.
4. 1992 Budget.
5. Election of Officers.
6. Other Council Business.

The Council will take comments from the public during its meeting. The public may also comment in writing to the address listed below.

For more information contact Kitty M. Simonds, Executive Director, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 526–0824.

Dated: December 3, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–29356 Filed 12–6–91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 757.

On August 20, 1991, notice was published in the **Federal Register** (56 FR 41335) that an application has been filed by John C. Shedd Aquarium for a permit to import four (4) beluga whales (*Delphinapterus leucas*) from tidal or estuarine waters of the western Hudson Bay in the vicinity of Churchill, Manitoba, Canada.

On October 3, 1991, notice was published in the **Federal Register** (56 FR 50100) that a public hearing would be held on this application on October 18, 1991. The hearing record was left open for receipt of written comments through October 28, 1991.

Notice is hereby given that on November 29, 1991, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above importation subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed importation is consistent with the purposes and policies of the Marine Mammal Protection Act. NMFS has determined that the John G. Shedd Aquarium will offer an acceptable program for education or conservation purposes. The JCSA will be open to the public on a regularly scheduled basis and access to the facilities will not be limited or restricted other than by the charging of an admission fee. The decision by NMFS to issue the Permit was based on available information, present regulations and existing policy. A more detailed discussion of the basis for this decision is available upon request from NMFS.

The Permit and Permit documents are available for review, by appointment, by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, SSMC#1, room 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200).

The administrative record associated with the issuance of the Permit, including written comments, the transcript of the public hearing, and an environmental assessment and finding of no significant impact prepared under the applicable provisions of the National Environmental Policy Act, are available for review, by appointment, by interested persons in the Office of Protected Resources at the address listed above.

Dated: November 29, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–29401 Filed 12–6–91; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Spectrum Planning Advisory Committee, Meeting

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Meeting, CITEL Subcommittee, Spectrum Planning Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the CITEL Subcommittee of the Spectrum Planning Advisory Committee (SPAC) will meet on December 20, 1991 at 9:30 a.m. in room 1605 at the United States Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Ave., NW., Washington, DC. Entrance to the building is at 14th Street and Pennsylvania Ave., NW.

The CITEL Subcommittee previously drafted the U.S. proposals for the recent Sixth Inter-American Telecommunications Conference (CITEL–VI). The agenda of the Subcommittee meeting will include a review of the decisions taken at the CITEL VI Conference, a review of the Terms of Reference for the Subcommittee, a discussion of CITEL activities, and preparations for the Americas' Development Conference.

The meeting is open for public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before December 17, 1991. Other public statements regarding Subcommittee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Convener SPAC/CITEL Subcommittee, Mr. William M. Moran, National Telecommunications and Information Administration, room 4716, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202–377–1866.

Dated: December 4, 1991.

W. Russell Slye,

Executive Secretary, Spectrum Planning Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 91–29353 Filed 12–6–91; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

December 3, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 11, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 641 is being increased for special shift, reducing the limit for Category 341 to account for the increase. As a result, the limit for Category 641, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51144, published on December 12, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 7, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on December 11, 1991, you are directed to amend further the directive dated December 7, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Level in Group I 341	3,007,699 dozen of which not more than 1,860,668 dozen shall be in Category 341-Y [2].
Sublevel in Group II 641	1,070,851 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.
[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29339 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DR-F

Discontinuation of the Administrative Arrangement with the Commonwealth of the Northern Mariana Islands (CNMI)

December 3, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The purpose of this notice is to advise the public that the administrative arrangement between the United States Government and the Commonwealth of the Northern Mariana Islands (CNMI) concerning sweaters assembled in the CNMI is being discontinued.

Cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646 which are exported from the CNMI on and after November 1, 1991 shall require an appropriate visa or export license and shall be charged to any existing quota of the country of origin.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29340 Filed 12-6-91; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through December 31, 1994, of information collection requirements set forth in 16 CFR 1505.4(a)(3) applicable to manufacturers and importers of electrically operated toys and children's articles. That rule requires manufacturers and importers of certain electrically operated toys and children's articles to develop and maintain a quality assurance program. The rule also requires those firms to maintain records for three years containing information about sales and distribution of products subject to the rule, material and production specifications, the characteristics of the quality assurance program, and the results of all inspections and tests conducted.

The purposes of these recordkeeping requirements are to reduce risks of injury to children from electrocution, electric shock, electrical burns, and thermal burns associated with electrically operated toys and children's articles, and to assist the Commission in determining the extent to which manufacturers and importers are complying with requirements for those products set forth in 16 CFR part 1505.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207

Title of information collection: Requirements for Electrically Operated Toys and Other Electrically Operated Articles Intended for Use by Children, 16 CFR 1505.4(a)(3).

Type of request: Extension of approval.

Frequency of collection: Recordkeeping.

General description of respondents: Manufacturers and importers of electrically operated toys and children's articles.

Estimated number of respondents: 40.

Estimated average number of hours per respondent: 40 per year for recordkeeping; 160 per year for testing.

Estimated number of hours for all respondents: 8,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416; after December 16, 1991, (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 3, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–29392 Filed 12–6–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Task Force on Economic Analysis and Modeling Related to Energy; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and in accordance with 41 CFR part 101–6, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the scope of the Secretary of Energy Advisory Board (SEAB) Task Force on Economic Modeling Related to Energy has been expanded to include economic analysis, and therefore has been renamed the Task Force on Economic Analysis and Modeling Related to Energy.

The Task Force will advise the Secretary of Energy on three broad areas concerning economic analysis and modeling related to energy: (1) Review the economic information requirements of the Department's missions and develop criteria that can be used to set an economic research, analysis, and modeling agenda; (2) examine the Department's near-term policy agenda and recommend priorities for ongoing economic research, analysis, and modeling; and (3) examine the Department's longer-term policy agenda and recommend priorities as the Department develops new data, economic tools of analysis, and models that would both meet the Department's needs and assist other Federal agencies and departments that pursue common and overlapping issues of policy. As a result of this expanded scope, the name of the task force will be changed to the Task Force on Economic Analysis and Modeling Related to Energy.

The membership of the Task Force includes 10 individuals, selected on the basis of their professional experience and competence in areas related to economic analysis and modeling. Particular attention was also paid to obtaining a balance of interests, points of view, and geography.

The expansion in scope of the SEAB Task Force on Economic Analysis and Modeling Related to Energy has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Task Force operates in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Frederica Cravens (202/586–3282).

Issued in Washington, DC on November 29, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91–29395 Filed 12–6–91; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on the DOE National Laboratories; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and in accordance with 41 CFR part 101–6, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Secretary of Energy Advisory Board (SEAB) Task Force on the Department of Energy (DOE) National Laboratories has been renewed for an additional year until October 31, 1992.

The Task Force will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the DOE's National Laboratories and the Department's management of those laboratories. It is expected to complete its work by September 30, 1992.

The membership of the Task Force includes 9 individuals, selected on the basis of their professional experience and competence in areas related to the research, development, energy, and national defense responsibilities of the Department. Particular attention also was paid to obtaining a balance of interests, points of view, and geography.

The extension of the SEAB Task Force on the DOE National Laboratories has been determined necessary and in the public interest in order to complete its work in connection with duties imposed upon the DOE by law. The Task Force operates in accordance with the provisions of FACA, the DOE Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Frederica Cravens (202/586–3282).

Issued in Washington, DC on November 29, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91–29396 Filed 12–6–91; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Radioactive Waste Management; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), and in accordance with 41 CFR part 101–6, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the scope of the Secretary of Energy Advisory Board (SEAB) Task Force on Civilian Radioactive Waste Management has been expanded to include defense and civilian radioactive waste, and has been renamed the Task Force on Radioactive Waste Management.

The Task Force will advise the Secretary of Energy on broad strategic issues related to civilian and defense radioactive waste management. The membership of the Task Force includes 14 individuals, selected on the basis of their professional experience and competence in areas related to radioactive waste management.

Particular attention will also be paid to obtaining a balance of interests, points of view, and geography.

The expansion in scope of the SEAB Task Force on Radioactive Waste Management has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Task Force operates in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Frederica Cravens (202/586-3282).

Issued in Washington, DC, on November 29, 1991.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 91-29397 Filed 12-6-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 1494-002 Oklahoma]

Grand River Dam Authority; Availability of Environmental Assessment

December 3, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Pensacola Hydroelectric Project located on the Grand (Neosho) River in Mayes County, near the towns of Langley and Disney, Oklahoma, and has prepared an Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the existing project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29375 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1390-001]

Southern California Edison; Notice of Availability of Environmental Assessment

December 3, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new, minor license for the Lundy Hydroelectric Project located on Mill Creek in Mono County near Lee Vining, CA, and has prepared a Draft Environmental Assessment (EA) for the project.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426, and at the local offices of the Forest Service and Bureau of Land Management in Bishop, CA.

Comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 1390-001 to all comments. For further information, please contact Tom Camp, Environmental Assessment Coordinator, at (202) 219-2832.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29384 Filed 12-6-91, 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10497-001 Oklahoma]

Tulsa Metropolitan Utility Authority, City of Tulsa, OK; Availability of Environmental Assessment

December 3, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Lake Eucha Dam Hydropower Project located on Spavinaw Creek in Delaware County, near Jay, Oklahoma, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29374 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. JD91-1011OT and GP92-1-000 Oklahoma-10]

Oklahoma Corporation Commission; Amended NGPA Determination

December 3, 1991.

Take notice that on November 29, 1991, the Oklahoma Corporation Commission (OCC) amended its notice of determination that was filed in the above-referenced proceeding on September 30, 1991, pursuant to § 271.703(c)(3) of the Commission's regulations. The September 30, 1991 notice determined that the Cherokee Group, located in portions of Beckham, Blaine, Caddo, Custer, Dewey, Roger Mills, and Washita Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The amended notice of determination reduces the geographical area recommended for tight formation designation. The amended notice covers only the following areas:

Beckham County—All of T11N-R21W and T11N-R22W.

Beckham and Roger Mills Counties—All of T11N-R23W, T11N-R24W, T12N-R21W and T12N-R22W; and Sections 1, 2, 3, 10 through 15, 22 through 27, 34, 35 and 36 in T11N-R25W.

Custer County—All of T12N-R20W, T13N-R19W, T13N-R20W, T14N-R19W, T14N-R20W T15N-R19W and T15N-R20W; and Sections 1 through 12, 16 through 21, and 25 through 36 in T12N-R19W.

Roger Mills County—All of T12N-R23W, T12N-R24W, T13N-R21W, T13N-R22W, T13N-R23W T13N-R24W T14N-R21W; T14N-R22W, T14N-R23W, T14N-R24W, Sections 1, 2, 3, 10 through 15, 22 through 27, 34, 35 and 36 in T12N-R25W, T13N-R25W, and T14N-R25W; Sections

1, 2, 11, 12, 13, 14, and 19 through 36 in T15N–R21W; Sections 7 and 14 through 36 in T15N–R22W; Sections 7 through 36 in T15N–R23W and T15N–R24W; and Sections 10 through 15, 22 through 27, 34, 35 and 36 in T15N–R25W.

Washita County—All of T9N–R19W, T9N–R20W, T10N–R19W, T10N–R20W, T11N–R19W and T11N–R20W.

The amended notice of determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the amended determination may file a protest within 7 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–29376 Filed 12–6–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. IN86–6–008]

Columbia Gas Transmission Corp. Report of Refund Recoupment

December 3, 1991.

Take notice that on August 21, 1991, Columbia Gas Transmission Corporation (Columbia) filed a report showing a recoupment of refunds previously made of $561,114.00 in principal plus $140,481.89 in interest. The recoupment is based upon a May 1, 1990 U.S. Court of Appeals ruling in *Columbia* v *FERC*, 899 F.2d 426 (5th Cir. 1990) that Columbia should not have been ordered to make refunds based upon customer purchasers during the period March 1, 1982 through December 31, 1982. Columbia states that it computed the amount of refunds which it is entitled to recoup based upon wholesale customer purchasers during the period March 1, 1982 through December 31, 1982, and included such amounts on the November 1990 wholesale customer invoices.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–29379 Filed 12–6–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–2–51–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on November 22, 1991 tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective January 1, 1992:

First Revised Volume No. 1

Eighth Revised Sheet No. 57(iv)

Original Volume No. 3

Fifth Revised Sheet No. 2
Fifth Revised Sheet No. 3

Great Lakes states that the above tariff sheets were filed to reflect a GRI Charge Adjustment of 1.51¢ per Mcf consistent with the Commission's Order of October 1, 1991 in Docket No. RP91–170–000, *et al.*, ("Opinion No. 365") approving the Gas Research Institute's 1992 Research and Development Program

Great Lakes requested that the above tariff sheets become effective January 1, 1992 to coincide with the effective date of the new GRI funding unit rate approved per the Commission's Order in the aforementioned docket.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before December 10, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–29382 Filed 12–6–91; 8:45 am]

BILLING CODE 6717–01–M

Docket No. RP91–143–007 RP91–231–002

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

December 3, 1991.

Take notice that on November 22, 1991 Great Lakes Gas Transmission Limited Partnership ("Great Lakes") tendered for filing Fourth Sub Fourth Revised Sheet No. 2 to its FERC Gas Tariff, Original Volume No. 3, to be effective November 1, 1991.

Great Lakes states that this tariff sheet was filed to correct errors contained on a tariff sheet previously filed on November 15, 1991.

Copies of this filing were served on all of Great Lakes' customers and the Public Service Commissions of Minnesota, Michigan and Wisconsin.

Great Lakes requested that the Commission grant the necessary waivers to permit the tariff sheet to become effective November 1, 1991.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before December 10, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91–29383 Filed 12–6–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM92–2–53–000]

K N Energy, Inc., Proposed Changes in FERC Gas Tariff

December 3, 1991.

Take notice that K N Energy, Inc. ("K N") on November 26, 1991, tendered for filing proposed changes in its FERC Gas Tariff, which KN states will adjust K N's commodity rates charged its jurisdictional customers pursuant to the Gas Research Institute charge adjustment provision (section 21) of K N's FERC Gas Tariff, First Revised Volume No. 1–B, effective January 1, 1992, per Opinion No. 365 issued on October 1, 1991. Copies of this filing were served upon the company's

jurisdictional customers, and interested public bodies according to KN.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29380 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-33-000]

National Fuel Gas Supply Corp.; Petition To Waive Tariff Provision

December 3, 1991.

Take notice that on November 22, 1991, National Fuel Gas Supply Corporation ("National") filed a Petition For Waiver of a provision of Rate Schedule FT.

The proposed effective date of the waiver is January 1, 1992.

National requests a waiver of section 3.2 of National's FT Rate Schedule to the extent necessary to permit National to accept a letter of credit or alternative financial assurances acceptable to National from Falcon Seaboard Gas Company or its assignees ("the Shipper") in an amount in excess of cost of performing the service requested by Shipper for a three-month period. National states that the limited financial assurances permitted by § 3.2 would not secure the cost of facilities National would be required to construct to serve the Shipper, and that the Shipper fully supports the instant petition.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 382.211 and 385.214). All such motions or protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29370 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-312-009]

Natural Gas Pipeline Company of America; Sale of Natural Gas

December 2, 1991.

Take notice that on October 30, 1991, Natural Gas Pipeline Company of America (Natural), 701 East Lombard Street, Lombard, Illinois, 60148-5072, submitted the following information regarding the sale of natural gas to be made to an affiliate under Natural's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket Nos. CP88-312-000 and CP88-312-002, issued December 20, 1988, and June 7, 1989, respectively (45 FERC ¶ 61,465 and 47 FERC ¶ 61,334).

(1) Name of Buyer: Utrade Gas Company (Utrade)

(2) Location of Buyer: Houston, Texas

(3) Affiliation between Natural and Buyer: Both Natural and Utrade are subsidiaries of MidCon Corp (MidCon).

(4) Term of Sale: December 1, 1991, through January 1, 1992, and month to month thereafter.

(5) Estimated Total and Maximum Daily Quantities:

Daily Quantity: 200,000 MMBtu

Estimated Total: 3,100,000 MMBtu

(6) Maximum sales rate: $3.12 per MMBtu

Minimum sales rate: $2.37 per MMBtu

Rate to be charged during billing period: $2.69 per MMBtu

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the orders of December 20, 1988 and June 7, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Natural may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29310 Filed 11-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-224-001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 3, 1991.

Take notice that Northern Natural Gas Company (Northern) on November 22, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 52C.9
Third Revised Sheet No. 52E.2
Original Sheet No. 52E.2a
Third Revised Sheet No. 52E.6
Original Sheet No. 52E.6a
Fifth Revised Sheet No. 52F.11
Ninth Revised Sheet No. 59
Eighth Revised Sheet No. 59A.

Northern states that such tariff sheets, with a proposed effective date of October 25, 1991, are being submitted in compliance with the Commission's October 24, 1991 Order in Docket No. RP91-224-000, which modifies the tariff to provide for temporary interruption procedures which Northern will follow in order to preserve the operational integrity of its system in the event of underdeliveries of nominated quantities of natural gas by Shippers on Northern's System.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29381 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-2-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 3, 1991.

Take notice that on November 22, 1991 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No:

FERC Gas Tariff, Original Volume No. 1

3rd / Eighty-Eighth Revised Sheet No. 3-A
3rd / Second Revised Sheet No. 3-A.1
3rd / Sixty-Fifth Revised Sheet No. 3-B
3rd / Twelfth Revised Sheet No. 3-B.1
2nd / Fourteenth Revised Sheet No. 3-F
2nd / Ninth Revised Sheet No. 3-G
1st / Seventh Revised Sheet No. 3-H
1st / Seventh Revised Sheet No. 3-I

FERC Gas Tariff, Original Volume No. 2

2nd / Fifteenth Revised Sheet No. 2731
2nd / Thirteenth Revised Sheet No. 2827
2nd / Thirteenth Revised Sheet No. 2850
2nd / Eleventh Revised Sheet No. 3010

The proposed effective date of these tariff sheets is January 1, 1992.

Panhandle states that such filing reflects a rate adjustment pursuant to Opinion No. 365 issued October 1, 1991 in Docket No. RP91-170, *et al.* Ordering Paragraph (B) if that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Panhandle, may file a general R&D cost adjustment to be effective January 1, 1992. This adjustment will permit the collection of 1.47 cents per Dt of Program Funding Services for payment to GRI.

Panhandle states that copies of this filing have been served on all affected customers subject to the tariff sheets and applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29377 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-35-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 3, 1991.

Take notice that on November 25, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective November 3, 1991:

Third Revised Sheet No. 42K
Third Revised Sheet No. 42W

South Georgia states that the purpose of this filing is to update its "on behalf of" certification requirements for section 311 transportation in order to comply with Order No. 537 and § 284.102(e) of the Commission's Regulations. South Georgia has requested a waiver of the Commission's Regulations in order to make these sheets effective November 3, 1991, the effective date of Order No. 537.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available to public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29371 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 3, 1991.

Take notice that on November 25, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Seventy-Ninth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. South Georgia states the filing is pursuant to the Purchased Gas Cost Adjustments (PGA) provision set out in Section 14 of South Georgia's FERC Gas Tariff and represents an out-of-cycle PGA rate adjustment with a proposed effective date of December 1, 1991.

South Georgia states that Seventy-Ninth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Commission's Regulations, and reflects an increase in jurisdictional revenues of approximately $153,000 which is attributable to an increase in the commodity component of $.16 per MMBtu from South Georgia's out-of-cycle PGA filing which was submitted on October 11, 1991, in Docket No. TQ92-2-8-000.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (Sections 385.211 and 385.214). All such motions or protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29373 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-36-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 3, 1991.

Take notice that on November 25, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective November 3, 1991:

Fourth Revised Sheet No. 53I.40
Fourth Revised Sheet No. 53I.56

Southern states that the purpose of this filing is to update its "on behalf of" certification requirements for section 311 transportation in order to comply with Order No. 537 and § 284.102(e) of the Commission's Regulations. Southern has requested a waiver of the Commission's Regulations in order to make these sheets effective November 3, 1991, the effective date of Order No. 537.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 91-29372 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT92-6-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 3, 1991.

Take notice that on November 25, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective November 1, 1991:

Fourteenth Revised Sheet No. 54
Fourteenth Revised Sheet No. 55
Fourteenth Revised Sheet No. 56
Fourteenth Revised Sheet No. 57
Fourteenth Revised Sheet No. 58
Twelfth Revised Sheet No. 59
Tenth Revised Sheet No. 60

Southern states that the purpose of this filing is to update its Index of Purchasers to reflect changes in firm contract quantities primarily as a result of conversions to firm transportation. Southern has requested a waiver of the Commission's Regulations in order to make these sheets effective November 1, 1991.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29369 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI92-11-000]

Tenaska Gas Co.; Application for a Blanket Certificate With Pregranted Abandonment

December 2, 1991.

Take notice that on November 21, 1991, Tenaska Gas Co. (Tenaska) of 407 North 117th Street, Omaha, Nebraska 68154, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment. Tenaska seeks authorization to make sales for resale in interstate commerce without rate restriction of natural gas subject to the Commission's NGA jurisdiction, including imported gas and liquefied natural gas, gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), and gas purchased from non-first sellers including intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tenaska to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-29311 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-629-012 and CP90-639-006]

Tennessee Gas Pipeline Co.; Tariff Filing

December 3, 1991.

Take notice that on November 22, 1991, Tennessee Gas Pipeline Company ("Tennessee") tendered for filing six copies of the following tariff sheets to be effective on December 1, 1991:

Third Revised Volume No. 1

Third Revised Sheet No. 30
Third Revised Sheet Nos. 157-160
Third Revised Sheet Nos. 161-219
Third Revised Sheet Nos. 419-427

Tennessee states that it is filing the enclosed tariff sheets pursuant to the Commission's orders issued on November 14, 1990 (Phase I Order) and October 9, 1991 (Phase II Order) in the above-referenced dockets, in order to implement Rate Schedule NET-LD and transportation service to four shippers pursuant to that rate schedule effective December 1, 1991.

Copies of this filing are available for public inspection at Tennessee's offices during regular business hours.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-29378 Filed 12-6-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket Nos. 86-44-NG, et al.]

[FE Docket No.'s 89-38-NG, 90-09-NG, 90-23-NG]

Brooklyn Union Gas Company, et al.; Orders Granting Long-Term Authorizations To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of final orders granting long-term authorizaton to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued final orders granting authorization to import Canadian natural gas to Brooklyn Union Gas Company, *et al.* (ERA Docket Nos. 86-44-NG, *et al.*), Boston Gas Company (FE Docket No. 89-38-NG), New England Power Company (FE Docket No. 90-09-NG), and Granite State Gas Transmission, Inc. (FE Docket No. 90-23-NG). All of the imports authorized are part of the proposed Iroquois/Tennessee Phase II (Phase II) Pipeline Project to import natural gas to the U.S. Northeast. The orders were issued upon completion of FE's and DOE's review and adoption of an Environmental Analysis completed by the Federal Energy Regulatory Commission (under section 7 of the Natural Gas Act) for the Phase II pipeline facilities.

Copies of these orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 27, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-29398 Filed 12-6-91; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 3, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0253.

Title: Part 68—Connection of Telephone Equipment to the Telephone Network (§§ 68.106, 68.108, 68.110).

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, farms, federal agencies or employees, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 57,540 responses; .057 hours average burden per response; 3,280 hours total annual burden.

Needs and Uses: Section 68.106 requires customers connecting terminal equipment or protective circuitry to the telephone network to provide, upon request, the particular line(s) to which such connection is made, the FCC registration number and ringer equivalence numbers necessary to the telephone company. The customer may be subject to other requirements depending on the components of the system being connected to the network. Section 68.108 requires telephone companies to notify customers of possible discontinuance of service when customer's equipment is malfunctioning and to inform them of their right to file a complaint. Section 68.110 requires telephone companies to provide technical information concerning interface parameters not specified in part 68 and to notify customers of changes in telephone company facilities, equipment, operations or procedures where such changes can be reasonably expected to render any customer's terminal equipment incompatible with the telephone company's communication facilities. The purpose of the program is to prevent harm to the telephone network with customer-provided telephone equipment is connected to the telephone company lines and assure that customers will not overload the telephone lines with excessive equipment which could degrade service to the customer and to others.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-29415 Filed 12-6-91; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 91-270; DA 91-1437]

Private Land Mobile Radio Services; Washington Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Washington (Region 43). As a result of accepting the Plan for Region 43, licensing of the 821-824/866-869 MHz band in that region may begin immediately.

EFFECTIVE DATE: November 29, 1991.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION: .

In the matter of Washington Public Safety Plan.

[PR Docket No. 91-270]

Order

Adopted: November 15, 1991.

Released: November 29, 1991.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On August 21, 1991, Region 43 (Washington) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Washington.

2. The Washington plan was placed on Public Notice for comments on September 12, 1991, 56 FR 47213

(September 18, 1991). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Washington and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Washington.

4. Therefore, we accept the Washington Public Safety Radio Plan. Furthermore, licensing of the 821–824/866-869 MHz band in Washington may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91–29350 Filed 12–6–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Tampa Port Authority, et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below

Agreement No.: 224–002810–007.

Title: Tampa Port Authority/Harborside Refrigerated Services, Inc.

Parties:

Tampa Port Authority
Harborside Refrigerated Services, Inc.

Filing Party: H.E. Welch, Registered Practitioner, Tampa Port Authority, George B. Howell Maritime Center, P.O. Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Synopsis: The Agreement, filed November 26, 1991, provides for a change in payment schedule. The date for reimbursement of monies due for the final payment of $40,505.11 is changed from October 31, 1991 to 50 percent during the week of November 29, 1991 and the balance the week of December 13, 1991.

Agreement No.: 224–003079–012.

Title: Tampa Port Authority/Eller and Company, Inc.

Parties:

Tampa Port Authority
Eller and Company, Inc.

Filing Party: H.E. Welch, Registered Practitioner, Tampa Port Authority, George B. Howell Maritime Center, P.O. Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Synopsis: The Agreement, filed November 26, 1991, provides for a change in payment schedule. The date for reimbursement of monies due for the final payment of $54,547.53 is changed from October 31, 1991 to 50 percent during the week of November 29, 1991 and the balance the week of December 13, 1991.

Agreement No.: 003–010071–016.

Title: The Cruise Lines International Association Agreement.

Parties:

Admiral Cruises
American Hawaii Cruises
Carnival Cruise Lines
Chandris Cruises
Clipper Cruise Line
Club Med Sales, Inc.
Commodore Cruise Line, Ltd.
Costa Cruises
Crown Cruise Line
Crystal Cruises
Cunard Line, Ltd.
Delta Queen Steamboat Co.
Diamond Cruise
Dlophin Cruise Line
Dolphin Hellas Cruises
Epirotiki Lines, Inc.
Holland America Line
Norwegian Cruise Line
Ocean Cruise Lines, Inc.
Oceanic Cruises
Paquet French Cruises
Premier Cruise Lines
Princess Cruises
Regency Cruises
Renaissance Cruises, Inc.
Royal Caribbean Cruise Line, Inc.
Royal Cruise Line
Royal Viking Line
Seabourn Cruise Line
Seawind Cruise Line
Seven Seas Cruise Line, Ltd.
Sun Line Cruises
Windstar Sail Cruises
World Explorer Cruises.

Filing Party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Shepard, P.C., 2600 Virginia Avenue, NW., suite 1000, Washington, DC 20037–1905.

Synopsis: The proposed amendment would restate and amend the Agreement with regard to membership requirements, fees and other administrative matters.

Dated: December 3, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc 91–29319 Filed 12–6–91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Jacksonville Port Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreeement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200576–001.

Title: Agreement and Lease, Associated Container Transportation (Australia) Ltd.

Parties:

Jacksonville Port Authority
Associated Container Transportation (Australia) Ltd.

Synopsis: This amendment to the Agreement, filed November 26, 1991, changes the name of Associated Container Transportation (Australia) Limited to Blue Star PACE.

Agreement No.: 224–200595.

Title: Tampa Port Authority/Apollo Stevedoring Company, Inc.

Parties:

Tampa Port Authority
Apollo Stevedoring Company, Inc.

Synopsis: The Agreement, filed November 27, 1991, provides that Tampa Port Authority will offer incentive rates on refrigerated container electrical service to Apollo Stevedoring Company, Inc. The incentive rates of $18.00 per container of 20 feet or less per 24-hour period or fraction thereof and $23.00 per container in excess of 20 feet will be offered from the effective date of the Agreement through May 14, 1992. The incentive rate is based on a minimum utilization rate of 30 containers per month.

Agreement No.: 224–200596.

Title: Tampa Port Authority/G & C Stevedoring Company, Inc.

Parties:

Tampa Port Authority
G & C Stevedoring Company

Synopsis: The Agreement, filed November 27, 1991, provides that the Tampa Port Authority will offer incentive rates on refrigerated container electrical service to G & C Stevedoring Company. The incentive rates of $18.00 per container of 20 feet or less per 24-hour period or fraction thereof and $23.00 per container in excess of 20 feet will be offered from the effective date of the Agreement through May 14, 1992. The incentive rate is based on a minimum utilization rate of 30 containers per month.

Dated: December 3, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–29320 Filed 12–6–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Alabama National Bancorporation, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Alabama National Bancorporation, Shoal Creek, Alabama; to engage *de novo* in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ruth Bank Corporation, Ruth, Michigan; to engage *de novo* in purchasing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Michigan.

Board of Governors of the Federal Reserve System, December 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–29322 Filed 12–6–91; 8:45 am]

BILLING CODE 6210–01–F

Boatmen's Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Boatmen's Bancshares, Inc., St. Louis, Missouri, and Boatmen's Bancshares of Iowa, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of First Interstate of Iowa, Inc., Des Moines, Iowa, and thereby indirectly acquire First Interstate Bank of Des Moines, N.A., Des Moines, Iowa; First Interstate Bank of Fort Dodge, Fort Dodge, Iowa; First Interstate Bank of Greenfield, Greenfield, Iowa; First Interstate Bank of Kalona, Kalona, Iowa;

First Interstate Bank of Marengo, Marengo, Iowa; First Interstate Bank of Iowa-North, Mason City, Iowa; First Interstate Bank of Iowa-Northwest, N.A., Spencer, Iowa; First Interstate Bank of Sigourney, Sigourney, Iowa; First Interstate Bank of Sioux City, Sioux City, Iowa; and First Interstate Bank of Urbandale, Urbandale, Iowa. Boatmen's Bancshares of Iowa, Inc. proposes to become a bank holding company by this acquisition.

In connection with this application, Applicants also propose to acquire First Interstate Information Systems of Iowa, Inc., Des Moines, Iowa, and thereby engage in providing data processing services, including but not limited to savings, checking, certificates of deposit, loans and lock box item processing; bookkeeping, exception item handling for insufficient funds and stop payment items, and storing and processing other banking, financial or related economic data; and leasing excess computer time for "on-site" use, including but not limited to providing microfiche, printing, floppy disc copying and electronic publishing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29323 Filed 12-6-91; 8:45 am]

BILLING CODE 6210-01-F

Orangevillebancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 30, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Orangevillebancorp, Inc., OrangeVille, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Orangeville Community Bank, Orangeville, Illinois.

Board of Governors of the Federal Reserve System, December 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-29324 Filed 12-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-679-NC]

RIN 0938-AE78

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1991

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. This revised schedule of limits applies to cost reporting periods beginning on or after July 1, 1991. As required by section 4207(d) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), this revised schedule of limits incorporates a blended hospital wage index.

DATES: *Effective date:* The Schedule of limits is effective for cost reporting periods beginning on or after July, 1991.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, and must be received by 5 p.m. on February 7, 1991.

ADDRESSES:

Mail comments to the following address:

Health Care Financing Administration
Department of Health and Human Services Attn: PBD-679-NC PO Box 26676 Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building 200 Independence Ave., SW. Washington, DC 20201

Room 132, East High Rise Building 6325 Security Boulevard, Baltimore, Maryland 21207

Due to Staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-679-NC. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: 202-245-7890).

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FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (301) 966-4602.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This statutory provision is implemented in the regulations at 42 CFR 413.30. Additional

provisions, specifically governing the limits applicable to home health agencies (HHAs), are contained at section 1861(v)(1)(L) of the Act. Under this authority, we have maintained limits on HHA per visit costs since 1979.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4026(a) of that law amended section 1861(v)(1)(L) of the Act to provide that, in establishing the schedule of limits for cost reporting periods beginning on or after July 1, 1988, the Secretary was to use a wage index based on audited wage data obtained from HHAs. In addition, the limits were to be based on the most recent data available, which could be for cost reporting periods beginning no earlier than July 1, 1985.

Section 411(d)(5) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360), which was enacted on July 1, 1988, delayed the effective date of the amendments made by section 4026(a) of the Public Law 100–203 to July 1, 1989. Section 411(d)(5) of Public Law 100–360 also specified that the data used to construct the HHA-specific wage index and the schedule of limits for cost reporting periods beginning on or after July 1, 1989 had to be "verified" rather than "audited". The HHA-specific wage data may be verified by the fiscal intermediary by use of appropriate means (that is, inquiries, correspondence, and an exchange of documents, rather than a field audit of the providers records.

A schedule of HHA cost limits was published in the **Federal Register** on October 18, 1988 (53 FR 40771), which was applicable for cost reporting periods beginning on or after July 1, 1988. That schedule of limits was based on cost per visit data from Medicare cost reports beginning on or after October 1, 1985. These data were adjusted, using the most recent market basket factors available at that time, to reflect cost increases occurring between the cost reporting periods contained in the data base and December 31, 1988, the midpoint of the first cost reporting period to which the limits apply. The HCFA hospital wage index was used to adjust for area wage differences.

In accordance with section 4026(a) of Public Law 100–203, as revised by section 411(d)(5) of Public Law 100–360, we published a final notice with comment period in the **Federal Register** (54 FR 27742) on June 30, 1989, which provided for an updated schedule of cost limits that used an HHA-specific wage index to adjust for area wage differences and accounted for the effects of inflation on HHA operating costs. That schedule of cost limits was to have been applicable to cost reporting periods beginning on or after July 1, 1989.

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) was enacted. Section 6222 of Public Law 101–239 required that we use the hospital wage index in effect for HHAs for cost reporting periods beginning prior to July 1, 1989, in determining the HHA schedule of limits effective for cost reporting periods beginning on or after July 1, 1989 and before July 1, 1991. In a final notice published on March 28, 1991 (56 FR 12934), we retroactively revised the schedule of cost limits that applied to HHAs effective July 1, 1989 to comply with this provision. %I11On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) was enacted. Section 4207(d) of Public Law 101–508 requires that in stablishing the HHA schedule of limits we are to use the most current hospital wage index. However, to lessen the effect on individual HHAs that would be caused by changing from the 1982 hospital wage data to the 1988 hospital wage data, the provision specifies that for cost reporting periods beginning on or after July 1, 1991 and before June 30, 1992, the applicable wage index is to consist of a blend of indices based on hospital wages and wage-related costs from 1982 and 1988. Specifically, for cost reporting periods beginning on or after July 1, 1991 and before July 1, 1992, 67 percent of the wage index value is to be based on the 1982 hospital wage survey data now in use for HHAs and 33 percent is to be based on the 1988 hospital wage survey data. For the cost reporting periods beginning on or after July 1, 1992 and before June 30, 1993, the blend is to be based on 33 percent of the 1982 hospital wage survey data and 67 percent of the 1988 hospital wage survey data. For periods beginning on or after July 1, 1993, we will use the most recent hospital wage survey data in effect at the time.

Section 4207(d)(1) of Public Law 101–508 revised section 1861(v)(1)(L)(iii) of the Act to specify that in applying the hospital wage index to HHAs, no adjustments are to be made to account for rural counties that have been deemed urban counties under section 1886(d)(8)(B) of the Act. In addition, no adjustments are to be made for any reclassifications resulting from decisions of the Medicare Geographic Classification Review Board under section 1886(d)(10) of the Act.

II. Application of Cost Limits on a Budget-Neutral Basis

Section 4207(d)(2) of Public Law 101–508 requires that, in updating the wage index, aggregate payments to home health agencies would remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to home health agencies are not affected by the changes in the wage index values.

In order to ensure budget neutrality, an adjustment must be made to the payments that would otherwise be made to home health agencies for the period beginning July 1, 1991. We determined that the wage index should be increased by a factor of 1.0175 to keep payments at the level at which they would have been if the 1982 hospital wage index continued to be used to compute payment limits. This factor was derived by first computing the amount of program savings that would have resulted from the cost limits effective July 1, 1991 if the 1982 hospital wage index were used. Then, program savings were computed using the blended wage index required by section 4207(d)(3) of Public Law 101–508. The use of the blended wage index resulted in higher savings, and therefore, lower program payments. Increasing the blended wage index by 1.75 percent results in the same program savings as would have been realized had we used the 1982 hospital wage index to calculate the limits. (See the example for calculating the special labor adjustment for budget neutrality for the occupational therapy limit in section VII.A below).

III. Use of Settled Cost Reports

The most recent cost data available were used to develop these HHA cost limits. Previous HHA databases included data from both settled and "as-submitted" cost reports. The settled cost reports were settled based on either a desk review or a field audit after desk review. All cost reports that are submitted by providers are desk reviewed by the fiscal intermediary for accuracy and for consistency with Medicare rules. Based on this review, the intermediary may make adjustments to the cost data or other data on the as-submitted cost report (for example, reducing the number of reported visits). In some cases, the desk-reviewed cost report is then settled by the intermediary and a Notice of Amount of Program Reimbursement (NPR) is sent to the provider. In other cases, the desk-reviewed cost report is subject to additional review, which may include a field audit by the intermediary, before settlement is completed and an NPR is issued.

Due to the length of time involved in receiving settled cost report data, previous HHA cost limits were

developed using a significant number of as-submitted cost reports. Consequently, the cost limits did not reflect adjustments that are made to the as-submitted cost reports during the settlement process, such as the elimination of nonallowable cost or non-covered visits. Cost limits based on these data may be higher than they would be if we were to use data from settled cost reports only. Notwithstanding this limitation, we propose to continue using as-submitted cost data instead of outdated settled data. Because events such as the recent nursing shortages often cause rapid changes in health care cost trends, we believe the advantages associated with using cost reports from the most recent cost reporting periods, which would necessitate continued use of as-submitted cost data, generally outweigh the advantages of using only settled cost report data.

As stated above, many as-submitted cost reports include unallowable Medicare costs or visits. In another **Federal Register** notice, we intend to propose adjusting as-submitted data in a database by a settlement adjustment factor. This factor would adjust the as-submitted data to approximate the impact of the intermediary's settlement on the data.

Based on the proposed notice, we would generally use as-submitted data, adjusted by a settlement adjustment factor to establish HHA cost limits. However, in this notice we are using data from settled cost reports with cost reporting periods ending on or after October 31, 1987 and before October 1, 1988 to compute the limits. We have not used as-submitted cost reports since we did not have a data base that indicated whether the data were from settled cost reports or as-submitted cost reports.

We considered collection of more recent HHA data for establishing these HHA limits, however, the data were not readily available. The time constraints associated with collecting new data and developing settlement adjustment factors would preclude developing new HHA limits by July 1, 1991, as required by section 4207 of Public Law 101–508. Accordingly, in order to meet the statutory deadline and assure that HHA cost limits are issued expeditiously, we are basing these HHA cost limits on settled data only. In future HHA data collections, where the latest data base contains identifiable as-submitted and settled data, we intend to base the HHA cost limits on more recent data. If the notice proposing use of settlement adjustment factors is published before the next schedule of HHA limits, we would apply the proposed settlement adjustment factor to the as-submitted cost reports.

IV. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1989, published in the **Federal Register** (56 FR 12934) on March 28, 1991. The cost limits have been updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and December 31, 1991, the midpoint of the first cost reporting period to which the limits apply.

A. Data Used

To develop the schedule of limits effective July 1, 1989 that was published in the **Federal Register** (56 FR 12934) on March 28, 1991, we extracted actual cost per visit data from Medicare cost reports for periods beginning on or after October 1, 1985 and ending before September 1, 1987. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1989. In this notice, we have updated the limits using the data from cost reporting periods ending on or after October 31, 1987 and before October 1, 1988 and the most recent market basket factors, to reflect cost increases occurring between the cost reporting periods contained in the data base and December 31, 1991, the midpoint of the first cost reporting period to which these July 1, 1991 limits apply.

Even though these are the most recent data available at this time, we recognize that the previsions of section 4021 of Public Law 100–203 may result in some HHAs incurring some costs that will not be reflected in the cost limits. That is, section 4021 of Public Law 100–203 requires changes in home health aide training and certification effective July 1, 1989. It is not possible for us to estimate the overall impact, if any, this provision will have on an HHA's total costs. However, this change will present a problem only if the HHA's costs exceed the cost limits as a result of these additional training requirements. Also provided in the July 1, 1989 notice, was a provision that allows HHAs to present documentation justifying payment of additional amounts in excess of the cost limits.

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits and the administrative and general (A&G) add-on to reflect differing wage levels among areas. In setting this schedule of limits, we used a blend of the HCFA hospital wage indices that were developed based on 1982 and 1988 hospital salary data.

The methodology for developing these wage indices is described in the October 18, 1988 **Federal Register** (53 FR 40771). The 1982 wage index has been updated to include corrections submitted by hospitals and to reflect the new Metropolitan Statistical Area (MSA) created by the Office of Management and Budget, effective June 30, 1990. The new MSA, which was not reflected in the July 1, 1989 HHA cost limit update, is Yuma, Arizona.

In addition, we have also incorporated exceptions to the MSA classification system for certain New England counties. These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218) and were authorized under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21). That section requires that any area that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford-New Britain-Middleton-Bristol, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Manchester-Nashua, NH MSA.
- Newport County, RI in the Providence-Pawtucket-Woonsocket, RI MSA.

We are adopting these urban exceptions for the purpose of applying the HCFA hospital wage index to the HHA cost limits. These changes will result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, SNFs, and HHAs. In New England, Metropolitan Statistical Areas (MSAs) are defined on town boundaries rather than on county lines. NECMAs are defined on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. This notice will make those four counties urban under either definition, NECMA or MSA. It has no effect on any other definitions.

V. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 112 percent of the mean cost of free-standing HHAs and is adjusted by the latest estimates in the market basket index.

The schedule of limits effective for cost reporting periods beginning on or after July 1, 1991 is based on the latest settled cost data available and provides for the following:

A. A classification system based on whether an HHA is located within an MSA, a New England County Metropolitan Area (NECMA) or a non-MSA area. (See Tables IIIa and IIIb in section IX, below, for the listing of MSAs/NECMAs and rural areas.)

B. The use of a single schedule of limits for hospital-based and free-standing agencies. This single limit is based on the cost experience of free-standing agencies. For each hospital-based discipline, we are providing for an add-on adjustment to the free-standing HHA limit (which is equal to 12.10 percent of the mean cost for the MSA hospital-based group and 12.25 percent for the non-MSA hospital-based group) to account for the higher A&G costs resulting from Medicare cost allocation requirements. The labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each free-standing limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category. The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1989 schedule. However, the relative cost shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and categories with lower rates of price increases receive lower weights.

In developing the relative weights used in the market basket index contained in this schedule, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1988 through 1993 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

Cost categories	Relative [1] importance 1992	Forecaster of percent (1988–1993)	Price variables used
Wages and salaries	68.3	DRI–CFS	Average hourly earnings of nonsupervisory private hospital workers (SIC 806). Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly).
Employee benefits	7.5	DRI–TL	Supplements to wages and salaries per worker in nonagriculture establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, Survey of Current Business (monthly). For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (monthly).
Transportation	3.8	DRI–TL	Transportation component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Office costs	2.8	DRI–TL	Services Component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Medical nursing	2.4	HCFA–HHS	Medical equipment and supplies component of the supplies and rental Consumer Price Index, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Rent	1.1	DRI–CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Dept. of Labor Statistics, Monthly Labor Review.
Nonrental space	1.1	DRI–TL	Composite Fuel and Other Utilities Index. Source: HHS-HCFA Community Hospital Price Index.
Miscellaneous	6.1	DRI–TL	Consumer Price Index for all items, all urban. Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Contract services	6.9		Weighted mean of price variables for the preceding eight items.
Total	100.0		

[1] Relative cost weights were derived initially from special studies by HCFA using data primarily from 1976 HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using these 1976 weights and the price variables indicated in this table. The relative importance values have changed over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI–TL refers to Data Resources, Inc., Trendlong (TL 1290), 29 Hartwell Avenue, Lexington, Massachusetts 02173. DRI–CFS refers to Data Resources, Inc., Cost Forecasting Services (CFS–904), 1750 K Street NW., Washington, DC 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than 3/10 of one percentage point (higher or lower).

E. The use of a blended hospital wage index. The wage index is used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas (MSA or MECMA and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (68.3 percent) and the employee benefits portion (7.5 percent), plus a factor representing a proportionate share of contract services (5.6 percent), are used to determine the labor component (81.4 percent) of all HHA per visit costs used to set the limits.

F. Separate treatment of the labor-related and nonlabor components of per visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods ending on or after October 31, 1987 and before October 1, 1988 and increasing those data by the actual and projected increases in the HHA market basket. We then separated each HHA's per visit costs into labor and nonlabor portions, and divided the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison

group, the resulting amounts are shown in Table I of section VIII, below.

G. The application of a cost-of living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

H. Limits that are determined for the per visit cost of each type of home health service: Skilled nursing care, physical therapy, speech pathology, occupation therapy, medical social services, and home health aide.

I. Application of the limits in the aggregate after the HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the costs remaining after these adjustments are made. Payment is limited to the lower of the actual costs or the cost limits.

VI. Methology for Determining Cost per Visit Limits

A. Data

For this notice, the cost limit values were determined by extracting settled actual cost per visit data from Medicare cost reports for periods ending on or after October 31, 1987 and before October 1, 1988. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1991, the midpoint of the first cost reporting period to which these limits apply. The following annual percentage increases were used to compute the per visit costs:

Calendar year	Percent increase
1987	[1] 4.6
1988	[1] 6.0
1989	[1] 6.1
1990	[2] 5.3
1991	[2] 5.8
1992	[2] 5.8
1993	[2] 5.9

[1] Final rate of increase.

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 3/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit.

B. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (81.4 percent) represents the 75.8 percent employee wage and benefit factor plus the 5.6 percent contract services factor from the market basket. We then divided the labor portion of per visit costs by the wage index (the blended wage index) applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliners"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service Limit

A basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per visit costs of free-standing HHAs is calculated for each type of service. (See Table I in section VIII.)

VII. Computing the Adjusted Limit

A. Adjustment of Cost Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the HHA's intermediary first determines the adjusted labor related component by multiplying the labor-related component of the limit by the appropriate wage index. (See example below and tables IIIa and IIIb in section IX.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to an HHA.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table I)	$63.53
Wage index value (Table III)	×1.0318
Labor portion	$65.55
Special labor adjustment for budget neutrality	×1.0175
Adjusted labor portion	$66.70
Nonlabor component (Table I)	+15.28
Adjusted occupational therapy limit	$81.98

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1991, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, where an HHA's cost reporting period begins January 1, 1992, as calculated in the example in section VII.A above, the labor-adjusted per visit limit for occupational therapy for this HHA's group is $81.98.

Computation of Revised Limit for Occupational Therapy

Adjusted per visit limit	$81.98
Adjustment factor from Table IV	×1.0288
Revised per visit limit	$84.34

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1992 is $84.34 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact the projections are computed to the midpoint of the cost reporting period. For cost reporting periods other than 12 months in duration, the calculation must be made for the midpoint of the specific cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

C. Adjustment for Hospital-Board Agencies

If an HHA participates in the Medicare program as part of a hospital and is required to file Form HCFA–2552 (hospital cost report), and qualifies as hospital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA is entitled to an adjustment of the per visit limit to account for higher A&G costs resulting from the Medicare cost allocation requirements. The intermediary will compute the adjusted cost limit as described in the example following Table II.

VIII. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1991 and before July 1, 1992. The intermediaries will compute the adjusted limits using the wage index published in Table IIIa and IIIb of section IX and will notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. 11).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a free-standing agency located in Richmond, VA, furnishes 5,000 covered skilled nursing visits, 2,000 covered physical therapy visits, and 4,000 covered home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning on July 1, 1991.

The aggregate cost limit is determined as follows:

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit [1]	Aggregate limit
Skilled nursing	5,000	$16.10	$65.83	$81.93	$409,650
Physical therapy	2,000	$15.20	$62.18	$77.38	$154,760
Home health aide	4,000	$8.68	$35.30	$43.98	$175,920
Aggregate cost limit					$740,330

[1] Includes special labor adjustment for budget neutrality of 1.75 percent.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for physical therapy under arrangements (see 42 CFR 413.106) and the limitation on costs that are substantially out of line with those of comparable home health agencies (see § 413.9).

TABLE I.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	$84.05	$67.95	$16.10
Physical therapy	$79.39	$64.19	$15.20
Speech pathology	$83.69	$67.61	$16.08
Occupational therapy	$78.81	$63.53	$15.28
Medical social services	$115.58	$93.06	$22.52
Home health aide	$45.12	$36.44	$8.68
Non-MSA location:			
Skilled nursing care	$96.06	$80.47	$15.59
Physical therapy	$97.04	$81.31	$15.73
Speech pathology	$101.95	$85.33	$16.62
Occupational therapy	$99.91	$83.25	$16.66
Medical social services	$154.83	$129.23	$25.60
Home health aide	$47.31	$39.63	$7.68

[1] Nonlabor portion of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED OME HEALTH AGENCIES

Type of visit	A & G Add-On	Labor portion	Nonlabor
MSA (NECMA) location:			
Skilled nursing care	$12.00	$9.60	$2.40
Physical therapy	10.10	8.10	2.00
Speech pathology	10.55	8.44	2.11
Occupational therapy	10.17	8.12	2.05
Medical social services	16.14	12.86	3.28
Home health aide	6.24	4.98	1.26

TABLE II.—ADD-ON AMOUNTS FOR HOSPITAL-BASED OME HEALTH AGENCIES—Continued

Type of visit	A & G Add-On	Labor portion	Nonlabor
Non-MSA location:			
Skilled nursing care	13.52	11.30	2.22
Physical therapy	13.23	11.06	2.17
Speech pathology	13.22	11.03	2.19
Occupational therapy	13.34	11.07	2.27
Medical social services	19.95	16.52	3.43
Home health aide	6.64	5.56	1.08

Example:

A hospital-based agency in State College, PA, has a wage index value of 1.0488. It provides skilled nursing, physical therapy, and home health aide services. The published limits for that agency are:

	Limit		Add-On	
	Labor portion	Nonlabor portion	Labor portion	Nonlabor portion
Skilled nursing	$67.95	$16.10	$9.60	$2.40
Physical therapy	64.19	15.20	8.10	2.00
Physical Home health aide	36.44	8.68	4.98	1.26

Calculation of Hospital-Based Limit With Add-On

	SN	PT	HHA
Limit labor portion	$67.95	$64.19	$36.44
Add-On labor portion	+9.60	+8.10	+4.98
Total labor portion	$77.55	$72.29	$41.42
Wage index value	×1.0488	×1.0488	×1.0488
Labor portion	$81.33	$75.82	$43.44
Special labor adjustment	×1.0175	×1.0175	×1.0175
Adjusted labor	82.75	77.15	44.20
Limit nonlabor	$16.10	$15.20	$8.68
Add-On nonlabor portion	+2.40	+2.00	+1.26
Adjusted limits	$101.25	$94.35	$54.14

IX. Wage Indexes

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene TX	0.9081
Taylor, TX	
Aguadilla, PR	0.5246
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.0540
Portage, OH	
Summit, OH	
Albany, GA	0.8144
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.9145
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0766
Bernalillo, NM	
Alexandria, LA	0.8877
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0258
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9767
Blair, PA	
Amarillo, TX	0.9315
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2411
Orange, CA	
Anchorage, AK	1.5301
Anchorage, AK	
Anderson, IN	0.9789
Madison, IN	
Anderson, SC	0.8003
Anderson, SC	
Ann Arbor, MI	1.2207
Washtenaw, MI	
Anniston, AL	0.8328
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0176
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	0.5374
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8815

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Buncombe, NC	
Athens, GA	0.8194
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	0.9647
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0553
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9541
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.0571
Kane, IL	
Kendall, IL	
Austin, TX	1.0657
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.1669
Kern, CA	
Baltimore, MD	1.0825
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9217
Penobscot, ME	
Baton Rouge, LA	0.9586
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0029
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9929
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0674
Beaver, PA	
Bellingham, WA	1.1153
Whatcom, WA	
Benton Harbor, MI	0.8660
Berrien, MI	
Bergen-Passaic, NJ	1.0604
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9932
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8352
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9465
Broome, NY	
Tioga, NY	
Birmingham, AL	0.9366
Blount, AL	
Jefferson, AL	
Saint Clair, AI	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.9572
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.9485
Monroe, IN	
Bloomington-Normal, IL	0.9455
McLean, IL	
Boise City, ID	1.0409
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1651
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0940
Boulder, CO	
Bradenton, FL	0.9224
Manatee, FL	
Brazoria, TX	0.8886
Brazoria, TX	
Bremerton, WA	0.9727
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury	1.1916
Fairfield, CT	
Brownsville-Harlingen, TX	0.8857
Cameron, TX	
Bryan-College Station, TX	0.9548
Brazos, TX	
Buffalo, NY	1.0100
Erie, NY	
Burlington, NC	0.7951
Alamance, NC	
Burlington, VT	0.9880
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.5682
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.9627
Carroll, OH	
Stark, OH	
Casper, WY	1.0345
Natrona, WY	
Cedar Rapids, IA	0.9758
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.9564
Champaign, IL	
Charleston, SC	0.8724
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0225
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	0.9162
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9441
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	0.9766
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.9109
Laramie, WY	
Chicago, IL	1.1747
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.1827
Butte, CA	
Cincinnati, OH-KY-IN	1.0647
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7900
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1297
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0239
El Paso, CO	
Columbia, MO	1.0523
Boone, MO	
Columbia, SC	0.9098
Lexington, SC	
Richland, SC	
Columbus, GA-AL	0.7785
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	0.9687
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.9470
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8732
Allegany, MD	
Mineral, WV	
Dallas, TX	1.0318
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7898

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.9936
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0520
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.9080
Volusia, FL	
Decatur, AL	0.7610
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.9162
Macon, IL	
Denver, CO	1.2170
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0100
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1430
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.8161
Dale, AL	
Houston, AL	
Dubuque, IA	0.9857
Dubuque, IA	
Duluth, MN-WI	0.9799
S. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.9163
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.9202
El Paso, TX	
Elkhart-Goshen, IN	0.9422
Elkhart, IN	
Elmira, NY	0.9437
Chemun, NY	
Enid, OK	0.9394
Garfield, OK	
Erie, PA	0.9718
Eire, PA	
Eugene-Springfield, OR	1.0763
Lane, OR	
Evansville, IN-KY	0.9909
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0338
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8324
Cumberland, NC	
Fayetteville-Springdale, AR	0.8054
Washington, AR	
Flint, MI	1.1925
Genesee, MI	
Florence, AL	0.7824
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.7939

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Florence, SC	
Fort Collins-Loveland, CO	1.0650
Larimor, CO	
Ft Lauderdale-Hollywood-Pompano Beach, FL	1.0958
Broward, FL	
Fort Myers-Cape Coral, FL	0.9628
Lee, FL	
Fort Pierce, FL	1.0498
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	0.8811
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8812
Okaloosa, FL	
Fort Wayne, IN	0.9352
Allen, IN	
De Kalb, IN	
Whitley, IN	
Forth Worth-Arlington, TX	0.9829
Johnston, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1246
Fresno, CA	
Gadsden, AL	0.8590
Etowah, AL	
Gainesville, FL	0.9367
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.0754
Galveston, TX	
Gary-Hammond, IN	1.0609
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9488
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9779
Grand Forks, ND	
Grand Rapids, MI	1.0409
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0485
Cascade, MT	
Greeley, CO	1.0301
Weld, CO	
Green Bay, WI	1.0085
Brown, WI	
Greensboro-Winston-Salem High Point, NC	0.9182
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.9060
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9449
Washington, MD	
Hamilton-Middletown, OH	0.9944
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9891
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown—New Britain-Bristol, CT	1.1621

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Litchfield, CT	
Hickory, NC	0.8908
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1882
Honolulu, HI	
Houma-Thibodaux, LA	0.8550
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0396
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	0.9491
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	0.8725
Madison, AL	
Indianapolis, IN	1.0258
Boone, In	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.1905
Johnson, IA	
Jackson, MI	1.0032
Jackson, MI	
Jackson, MS	0.8819
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7919
Madison, TN	
Jacksonville, FL	0.9344
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7700
Onslow, NC	
Jamestown-Dunkirk, NY	0.8263
Chautaqua, NY	
Janesville-Beloit, WI	0.9109
Rock, WI	
Jersey City, NJ	1.0921
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	0.8640
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.9379
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0935
Grundy, IL	
Will, IL	
Joplin, MO	0.8767

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2138
Kalamazoo, MI	
Kankakee, IL	0.9175
Kankakee, IL	
Kansas City, KS-MO	1.0309
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0207
Kenosha, WI	
Killeen-Temple, TX	0.9672
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8886
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9905
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.9769
LaCrosse, WI	
Lafayette, LA	0.9490
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8925
Tippecanoe, IN	
Lake Charles, LA	0.9488
Calcasieu, LA	
Lake County, IL	1.1096
Lake, IL	
Lakeland-Winter Haven, FL	0.8630
Polk, FL	
Lancaster, PA	1.0023
Lancaster, PA	
Lansing-East Lansing, MI	1.0594
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7873
Webb, TX	
Las Cruces, NM	0.8486
Dona Ana, NM	
Las Vegas, NV	1.1053
Clark, NV	
Lawrence, KS	0.9771
Douglas, KS	
Lawton, OK	0.9114
Comanche, OK	
Lewiston-Auburn, ME	0.9309
Androscoggin, ME	
Lexington-Fayette, KY	0.9403
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.9280
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.9464
Lancaster, NE	
Little Rock-North Little Rock, AR	1.0236

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8509
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.9843
Lorain, OH	
Los Angeles-Long Beach, CA	1.2986
Los Angeles, CA	
Louisville, KY-IN	0.9757
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.9688
Lubbock, TX	
Lynchburg, VA	0.8997
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.9157
Bibb, GA	
Huston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0712
Dane, WI	
Manchester-Nashua, NH	0.9812
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.9416
Richland, OH	
Mayaguez, PR	0.5415
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7787
Hidalgo, TX	
Medford, OR	1.0259
Jackson, OR	
Melbourne-Titusville, FL	0.9325
Brevard, FL	
Memphis, TN-AR-MS	1.0022
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.1533
Merced, CA	
Miami-Hialeah, FL	1.0538
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0373
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1002
Midland, TX	
Milwaukee, WI	1.0853
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN-WI	1.1461

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8730
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1935
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9922
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.8855
Ouachita, LA	
Montgomery, AL	0.8502
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.9405
Delaware, IN	
Muskegon, MI	0.9803
Muskegon, MI	
Naples, FL	1.0413
Collier, FL	
Nashville, TN	0.9415
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3090
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	0.9847
Bristol, MA	
New Haven Waterbury-Meriden, CT	1.1557
New Haven, CT	
New London, London-Norwich	1.1267
New London, CT	
New Orleans, LA	0.9202
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3735
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1354
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.8775
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	0.9305

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4699
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8700
Marion, FL	
Odessa, TX	1.0025
Ector, TX	
Oklahoma City, OK	1.0341
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0866
Thurston, WA	
Omaha, NE-IA	1.0008
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange, County, NY	0.9423
Orange, NY	
Orlando, FL	1.0000
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8206
Daviess, KY	
Oxnard-Ventura, CA	1.2678
Ventura, CA	
Panama City, FL	0.8453
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8933
Washington, OH	
Wood, WV	
Pascagoula, MS	0.9376
Jackson, MS	
Pensacola, FL	0.8708
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.9965
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1513
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0684
Maricopa, AZ	
Pine Bluff, AR	0.7969
Jefferson, AR	
Pittsburgh, PA	1.0723
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0432
Berkshire, MA	
Ponce, PR	0.6160
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9690
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Porland, OR	1.1912
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	0.9615
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0191
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0547
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	0.9389
Utah, UT	
Pueblo, CO	1.0386
Pueblo, CO	
Racine, WI	0.9624
Racine, WI	
Raleigh-Durham, NC	0.9641
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.9221
Pennington, SD	
Reading, PA	0.9767
Berks, PA	
Redding, CA	1.1787
Shasta, CA	
Reno, NV	1.1773
Washoe, NV	
Richland-Kennewick, WA	0.9978
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9521
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2069
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8765
Botetourt, VA	
Roancke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0540
Olmsted, MN	
Rochester, NY	1.0060
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.0670
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2732
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0759
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.9825
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9469
Buchanan, MO	
St. Louis, MO-IL	1.0354
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Sullivan City, MO	
Salem, OR	1.0803
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2736
Monterey, CA	
Salt Lake City-Ogden, UT	1.0220
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.9531
Tom Green, TX	
San Antonio, TX	0.8762
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.2678
San Diego, CA	
San Francisco, CA	1.5867
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4762
Santa Clara, CA	
San Juan, PR	0.5797
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catario, PR	
Corozal, PR	

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1812
Santa Barbara, CA	
Santa Cruz, CA	1.2558
Santa Cruz, CA	
Santa Fe, NM	0.9592
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3064
Sonoma, CA	
Sarasota, FL	0.9693
Sarasota, FL	
Savannah, GA	0.8726
Chatham, GA	
Effingham, GA	
Scranton, Wilkes Barre, PA	0.9645
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1350
King, WA	
Snohomish, WA	
Sharon, PA	0.9531
Mercer, PA	
Sheboygan, WI	0.9553
Sheboygan, WI	
Sherman-Denison, TX	0.8782
Grayson, TX	
Shreveport, LA	0.9515
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	0.9548
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.9757
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0087
St. Joseph, IN	
Spokane, WA	1.1277
Spokane, WA	
Springfield, IL	1.0214
Menard, IL	
Sangamon, IL	
Springfield, MO	0.9275
Christian, MO	
Greene, MO	
Springfield, MA	1.0152
Hampden, MA	
Hampshire, MA	
State College, PA	1.0488
Centre, PA	
Steubenville-Weirton, OH-WV	0.9346
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2459

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
San Joaquin, CA	
Syracuse, NY	1.0061
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0814
Pierce, WA	
Tallahassee, FL	0.9419
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	0.9622
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8562
Clay, IN	
Vigo, IN	
Texarkana, TX-AR	0.8402
Miller, AR	
Bowie, TX	
Toledo, OH	1.1547
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0183
Shawnee, KS	
Trenton, NJ	1.0231
Mercer, NJ	
Tucson, AZ	0.9930
Pima, AZ	
Tulsa, OK	0.9558
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.9627
Tuscaloosa, AL	
Tyler, TX	0.9907
Smith, TX	
Utica-Rome, NY	0.8673
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3341
Napa, CA	
Solano, CA	
Vancouver, WA	1.1379
Clark, WA	
Victoria, TX	0.8474
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9879
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0566
Tulare, CA	
Waco, TX	0.8688
McLennan, TX	
Washington, DC-MD-VA	1.1631
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	0.9548

TABLE IIIA.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Black Hawk, IA	
Bremer, IA	
Wausau, WI	0.9836
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0033
Palm Beach, FL	
Wheeling, WV-OH	0.9130
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1002
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	0.8580
Wichita, TX	
Williamsport, PA	0.9088
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0689
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	0.9304
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0341
Worcester, MA	
Yakima, WA	1.0303
Yakima, WA	
York, PA	0.9582
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0282
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0369
Sutter, CA	
Yuba, CA	
Yuma, AZ	0.9462
Yuma, AZ	

TABLE III—B. WAGE INDEX FOR RURAL AREAS

Non-Urban areas	Wage index
Alabama	0.7307
Alaska	1.4477
Arizona	0.9013
Arkansas	0.7462
California	1.0970
Colorado	0.9026
Connecticut	1.0950
Delaware	0.8626
Florida	0.8793
Georgia	0.7767
Hawaii	0.9984
Idaho	0.9080
Illinois	0.8516
Indiana	0.8378
Iowa	0.8320
Kansas	0.8141
Kentucky	0.7960
Louisiana	0.8203
Maine	0.8551
Maryland	0.8541
Massachusetts	1.0924
Michigan	0.9333
Minnesota	0.8634
Mississippi	0.7411
Missouri	0.7955
Montana	0.8860
Nebraska	0.7877
Nevada	1.0440
New Hampshire	0.9356

TABLE III—B. WAGE INDEX FOR RURAL AREAS—Continued

Non-Urban areas	Wage index
New Jersey	[1]
New Mexico	0.8913
New York	0.8634
North Carolina	0.8044
North Dakota	0.8619
Ohio	0.8875
Oklahoma	0.8113
Oregon	1.0379
Pennsylvania	0.9161
Puerto Rico	[2] 0.5271
Rhode Island	[1]
South Carolina	0.7760
South Dakota	0.7903
Tennessee	0.7606
Texas	0.7880
Utah	0.9337
Vermont	0.8943
Virginia	0.8069
Virgin Islands	[2] 1.0000
Washington	1.0067
West Virginia	0.8712
Wisconsin	0.8810
Wyoming	0.9321

[1] All counties within State are classified urban.
[2] Approximate value for area.

TABLE IV.—COST REPORTING YEAR ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins—	The adjustment factor is—
August 1, 1991	1.0048
September 1, 1991	1.0096
October 1, 1991	1.0143
November 1, 1991	1.0192
December 1, 1991	1.0239
January 1, 1992	1.0288
February 1, 1992	1.0338
March 1, 1992	1.0385
April 1, 1992	1.0436
May 1, 1992	1.0485
June 1, 1992	1.0537

[1] Based on compounded projected market basket inflation rates of 5.80 percent for 1992 and 5.90 percent for 1993.

IX. Other Required Information

A. Waiver of Proposed Notice

n adopting notices, such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act.

As we discussed in section IV above, we have used the same methodology to develop the schedule of limits that was used in setting the limits published on March 28, 1991. However, as required by section 4207(d)(3) of Public Law 101–508, we are using a wage index based on a specified blend of hospital wage data from 1982 and 1988. The cost limits have been updated to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and December 31 1991.

Because the methodology used to develop this schedule of limits was previously published for public comment and because the applicable wage index is mandated by section 4207(d)(3) of Public Law 101–508 for cost reporting periods beginning July 1, 1991, we believe that it would be impracticable and unnecessary to request public comment before implementation of these cost limits. To do so would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice.

B. Waiver of 30-Day Delay in Effective Date

We normally provide a delay of 30 days in the effective date for documents such as this. However, the clear direction of section 4207(d)(3) of Public Law 101–508 requires that effective for cost reporting periods beginning on or after July 1, 1991, we use a wage index based on a specified blend of hospital wage data from 1982 and 1988. Because publication of this schedule of cost limits is required by section 1861(v)(1)(L)(iii) of the Act as revised by section 4207(d)(1) of Public Law 101–508 and applies to cost reporting periods beginning on or after July 1, 1991, we believe that a delay in the effective date is unnecessary. Therefore, we find good cause to waive the usual 30-day delay in the effective date of this notice with comment period.

C. Paperwork Reduction Act

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

D. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknoledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "DATES" section of this notice, and, if changes are made in another notice, we will respond to these comments in that notice.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)); and 42 CFR 413.30.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 23, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 15, 1991.

Louis W. Sullivan,

Secretary.

Appendix: Regulatory Impact Statement and Flexibility Analysis

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act (the RFA) (5 U.S.C. 601 through 612). For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside an MSA.

This notice implements the provision of section 4207(d) of Public Law 101–508, which amended section 1861(v)(1)(L)(iii) of the Act. Section 1861(v)(1)(L)(iii) of the Act provides that not later than July 1, 1991, and annually thereafter, the Secretary shall establish limits utilizing the area wage index value applicable under section 1886(d)(3)(E) of the Act to hospitals located in the geographic area in which the home health agency is located (determined without regard to whether these hospitals have been reclassified to a new geographic area under section 1886(d)(8)(B) of the Act, a decision of the Medicare Geographic Classification Review Board under section 1886(d)(10) of the Act, or a decision of the Secretary). Under section 1861(v)(1)(L)(iii) of the Act, the Secretary is to ensure that Medicare aggregate payments to home health agencies will be no greater or lesser than these payments would have been without

updating the wage index. That is, the changes in the wage index values should neither increase nor decrease payments to HHAs. In addition, section 1861(v)(1)(L)(iii) of the Act sets forth provisions concerning the use of a blended wage index using both hospital wage data from 1982 and 1988 for cost reporting periods beginning on or after July 1, 1991 and before July 1, 1993.

Based on the data available to us, we estimate the new HHA cost limits implemented in this notice with public comment period will increase Medicare expenditures for HHA services by $1 million in FY 1991 and $20 million in FY 1992. (The increase in FY 1991 expenditures is so low because this notice is effective only during the last quarter of FY 1991, a period in which relatively few HHA cost reporting periods begin.)

We believe that any effects of these provisions on the economy and public will be the result of the statute rather than provisions in this notice. In addition, the projected Medicare costs do not meet the $100 million threshold criterion of E.O. 12291, nor do we believe that this notice with public comment period meets the other criteria of E.O. 12291. Therefore, a final regulatory impact analysis is not required. Also, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

B. Voluntary Regulatory Flexibility Analysis

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

We are preparing a voluntary regulatory flexibility analysis for this notice because of the large number of HHAs that will be affected by the provisions of this notice, which implement the statute.

1. Affected Entities

As of April 3, 1991 there are 5,830 HHAs. Of that number, approximately 8 percent (475) are visiting nurse associations; less than 1 percent (41) are combination government and voluntary agencies; 16 percent (935) are State or local government agencies; less than 1 percent (9) are rehabilitation center-based; 27 percent (1,556) are hospital-based; 2 percent (107) are SNF-based and 46 percent (2,707) are classified as other than the classifications provided above.

We do not have sufficient data to predict exactly which HHAs will be most affected by this notice nor the magnitude of the impact upon individual HHAs. However, it is certain that individual HHAs will be affected to greater or lesser degree depending upon the extent to which their total payment is derived from Medicare. We believe that approximately 28 percent of the HHAs will be affected negatively by the new cost limits (that is, their costs will exceed the cost limits).

2. Conclusion

To lessen the effect of changing from use of 1982 hospital wage data to use of 1988 hospital wage data, section 1861(v)(1)(L)(iii) of the Act specifies that for HHA cost reporting periods beginning on or after July 1, 1991 and before July 1, 1993, the applicable wage index consists of a blend of 1982 and 1988 hospital wages and wage-related costs. The use of a blended hospital wage index will result in HHA cost limits that more accurately reflect an HHA's real cost of providing service than if we used only the 1982 or 1988 wage data. On that basis, use of the blended wage data is reasonable.

[FR Doc. 91-24362 Filed 12-6-91; 8:45 am]
BILLING CODE 4120-03-M

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATE: The meeting will be open to the public on December 11, 1991 from 9 a.m. to 7 p.m.

ADDRESS: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza Southwest, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Lagoyda, Program Analyst, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;
- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of the following members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, John Meagher, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will discuss issues relating to health care financing policy.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance)

Dated: December 3, 1991.

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 91-29457 Filed 12-6-91; 8:45 a m]
BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, January 16–17, 1992, Building 31, Conference Room 10, Sixth Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on January 16 from 8:30 a.m. to 5 p.m. and on January 17 from 8:30 a.m. until adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, Executive Plaza-North, room 318, National Institutes of Health, Bethesda, Maryland 20892 (301–496–8526), upon request.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93,398, Cancer Research Manpower; 93,399, Cancer Control.)

Dated: November 27, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–29349 Filed 12–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Institute of Allergy and Infectious Diseases

Microbiology and Infectious Diseases Research Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 27–28, 1992, in Building 31A, Conference Room 4, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8 a.m. to 10 a.m. on February 27, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until recess on February 27, and from 8 a.m. until adjournment on February 28. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Peter R. Jackson, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Control Data Building, room 4C13, Bethesda, Maryland 20892, telephone (301–496–8426), will provide substantive program information.

Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.

Sue Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–29344 Filed 12–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, January 6–7, 1992, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The entire meeting will be open to the public from 8:30 a.m. on January 6 to adjournment on January 7. Attendance by the public will be limited to space available. The Board will review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research and shall advise on the provisions of the statute-required comprehensive plan for the conduct and support of medical rehabilitation research.

Ms. Mary Plummer, Committee Management Officer, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. If you have specific disability-related requirements please call.

Dated: November 27, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–29348 Filed 12–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, National Institute of Child Health and Human Development

Notice of Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of meeting of the National Advisory Child Health and Human Development Council, January 27–28, 1992, in the Shannon Building (bldg. 1), Wilson Hall, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on January 27, from 8 a.m. to 9:30 a.m. in building 31, room 2A03.

The Council meeting will be open to the public on January 27 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, and a report by the Human Learning and Behavior Branch, NICHD. The meeting will be open on January 28 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 27 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 28 from 8 a.m. to completion of the

review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Council Secretary, NICHD, Executive Plaza North, room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health.

Dated: November 27, 1991.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–29345 Filed 12–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Institute of Dental Research

Notice of the Meeting of National Advisory Dental Research Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held January 21–22, 1992, Conference Room 10, building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:30 a.m. to recess on January 21 for general discussion and program presentations. A meeting of the National Advisory Dental Research Council Subcommittee on Minority Activities will be held on January 22 from 1 p.m. until adjournment at the same location. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 91–463, the meeting of the council will be closed to the public on January 21 from 8:30 a.m. to 9:30 a.m. and on January 22 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, National Institute of Dental Research, National Institutes of Health, building 31, room 2C39, Bethesda, Maryland 20892, (telephone 301–469–9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research.

Dated: November 27, 1991.

Sue Feldman,

Committee Management Officer, NIH.

[FR Doc. 91–29346 Filed 12–6–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–02–4351–08–241A]

Randolph Management Framework Plan and Box Elder Resource Management Plan Amendments; Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the proposed planning amendments of the Randolph Management Framework Plan and the Box Elder Resource Management Plan to modify recreation and OHV use in Rich County and Box Elder County, Utah.

SUMMARY: This notice of availability is to advise the public that the proposed planning amendments are available for public review. The proposed amendments are to modify OHV and recreation opportunities in Rich County by removing 17,135 acres of public land from the A–1 Open Category and place them into the B–3 Limited Category to protect crucial big game and sage grouse winter range. These lands are described as follows:

All public lands within T.7 N., R.7 E., T.7N., R.8 E., T.8 N., R.8 E., and T.8 N., R.7E, Salt Lake Meridian, Utah for a total of 17,135 acres.

The amendment also includes closing 5,282 acres of BLM lands in Rich County to recreation during the period of January 1 through May 15. These lands are described as follows:

Those lands located west of Highway 16 within T.8 N., R.8 E., Salt Lake Meridian, Utah for a total of 5,282 acres.

The BLM also has a proposed amendment to not allocate forage for livestock on 1,920 acres of public lands in Box Elder County, close these lands to recreational use from March 1 through June 30, and close these lands to ORV use with the exception of BLM, State and other authorized individuals.

A 30-day protest period for the planning amendments will commence with the publication of this notice of availability.

FOR FURTHER INFORMATION CONTACT: Leon E. Berggren, Bear River Resource Area Manager, 2370 South, 2300 West, Salt Lake City, Utah 84119, (801) 977–4300.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed planning amendments are subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1601.5–2. Protest must be received by the Bureau of Land Management, Director (WO–760), 18th and C Street NW., Washington, DC 20240, within 30 days after the date of publication of this notice of availability for the proposed planning amendments.

Leroy R. Turner,

Utah Acting State Director.

[FR Doc. 91–29325 Filed 12–6–91; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Republication and Availability of Species Lists

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Service announces the republication and availability of the current Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11 and 17.12.

DATES: The republished lists contain all changes through July 15, 1991.

ADDRESSES: Requests for copies should be addressed to the Publications Unit, U.S. Fish and Wildlife Service, ARLSQ–130, Washington, DC 20240 (703/358–1706).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ–452, Washington, DC 20240, (703/358–2171).

SUPPLEMENTARY INFORMATION: The Service has incorporated into a separate

reprint all changes through July 15, 1991, to the lists at 50 CFR 17.11 and 17.12 published since the October 1, 1990, compilation of that title. In addition, minor changes or corrections to the spellings of names, historic ranges and special rules applicable to a particular entry in the table and found elsewhere in this title have been incorporated in this special reprinting of these lists. Otherwise, no entry in these lists has been significantly affected. The document also contains a list of the species that have been entirely removed from §§ 17.11 or 17.12 since 1973. The 36-page document is available from the Publications Unit (address above).

Dated: November 20, 1991.

Richard M. Smith,

Acting Director.

[FR Doc. 91-29399 Filed 12-6-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Boundary Revision; Chickasaw National Recreation Area

Pursuant to Public Law 94-235 (90 Stat. 235), the boundary of Chickasaw National Recreation Area is revised to include an additional 409.04 acres as shown on a map entitled "Boundary Map, Chickasaw National Recreational Area," Drawing No. 107/80027, dated April 1991. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior, 1100 L Street NW., Washington, DC 20004; the Office of the Southwest Region, National Park Service, 1220 S. St. Francis Drive, Santa Fe, New Mexico 87504-0728; and the Office of the Superintendent, Chickasaw National Recreation Area.

Dated: November 25, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91-29409 Filed 12-6-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan/ Environmental Impact Statement for Fort Clatsop National Memorial, OR

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for the General Management Plan for Fort Clatsop National Memorial, Oregon.

SUMMARY: The National Park Service will prepare an environmental impact statement (EIS) to assess the impacts of alternative management concepts described in the General Management Plan (GMP) for Fort Clatsop National Memorial. The GMP sets forth the basic management philosophy for a unit of the National Park System and provides the strategies for addressing issues and achieving identified management objectives for that unit. The plan will describe strategies for managing natural and cultural resources and for providing for appropriate visitor use and interpretation for those resources. Development concept plans for selected facilities may be included with the GMP.

Major issues to be addressed in the GMP/EIS include increasing visitation; area land use changes; land protection needs adjacent to the park boundary; opportunities to protect and commemorate the route of the Lewis and Clark trail between the Fort and the Pacific Ocean; use and interpretation of the Salt Works site in Seaside, Oregon; future administrative and visitor facility needs; and coordination with other entities in the region regarding the resources that relate to the Lewis and Clark story.

A full range of alternatives, including a "no action" alternative, will be considered in the GMP/EIS to address these and other issues that may emerge during the planning process.

Representatives of federal, state and local agencies, private organizations, and individuals from the general public who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this Notice with written comments. A public scoping meeting will be held at the Fort Clatsop National Memorial Visitor Center, Astoria, Oregon, on Thursday, January 30, 1992, at 7 p.m.

The draft plan and environmental impact statement are expected to be completed and available for public review by the fall of 1992. The final version of the GMP/EIS and the Record of Decision are expected to be completed by the spring of 1993.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Written comments on the scope of the issues and alternatives to be analyzed in the GMP/EIS should be received no later than February 29, 1992.

ADDRESSES: Written comments concerning the GMP/EIS should be sent to the Superintendent, Fort Clatsop National Memorial, Route 3, Box 604-FC, Astroia, OR 97103.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Clatsop National Memorial, at the above address or at telephone number (503) 861-2471.

Dated: November 27, 1991.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 91-29410 Filed 12-6-91; 8:45 am]

BILLING CODE 4310-70-M

Statue of Liberty National Monument, Ellis Island, New York, NY; Public Meeting

Notice is hereby given that the National Park Service (NPS) will hold a public meeting on Tuesday, December 17, 1991.

The purpose of the meeting will be to present to the public the proposal for the use and treatment of the remaining deteriorating buildings on Ellis Island as an international conference center with overnight facilities and a commercial facility serving park visitors and conferees. The proposal will result in the rehabilitation of 626,700 square feet in 20 buildings (2 of which with 245,000 square feet have already been rehabilitated) and the demolition of 69,800 square feet in 12 buildings.

Views of the public regarding the impact of the project on the historic characteristics of Ellis Island are being sought in order to fulfill NPS responsibilities under section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations (36 CFR 800).

The meeting will commence at 7:30 PM on Ellis Island. Access will be by Circle Line—Statue of Liberty Ferry. Ferries will leave from Battery Park in Manhattan and Liberty State Park in Jersey City at 6:30 p.m. and 7 p.m. Ferry access for purposes of this meeting is free of charge.

The agenda will be:

1. Presentation of the proposal.
2. Comments by interested individuals by pre-registration.
3. Comments by non-registered individuals.

The meeting is open to the public. Interested persons may register to make oral presentations to the NPS or may file written presentations. Submission of written presentations or pre-registration should be made to the Chief of Urban Projects, 26 Wall Street, New York, NY 10005. Following the meeting, written comments will be accepted until January 6, 1992.

Further information concerning this meeting may be obtained from the Chief of Urban Projects at the above address or at (212) 264-4450.

Dated: December 2, 1991.

Gerald D. Patten,

Regional Director.

[FR Doc. 91-29360 Filed 12-6-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 30, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 24, 1991.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Putnam County

O'Hair, James Edington Montgomery, House, US 231½ mi. S of jct. with 500 North Rd., Brick Chapel vicinity, 91001909

NORTH CAROLINA

Franklin County

Speed Farm, W side NC 1436 between NC 1432 and NC 1434, Gupton vicinity, 91001907

Herford County

Cowper—Thompson House, 405 North St., Murfreesboro, 91001908

NORTH DAKOTA

Grand Forks County

United Lutheran Church, 324 Chestnut St., Grand Forks, 91001906.

[FR Doc. 91-29361 Filed 12-6-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31955]

Burlington Northern Railroad Co.—Lease Exemption—The Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts the Burlington Northern Railroad Company from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, to lease a 4.4-mile rail line owned by The Atchison, Topeka and Santa Fe Railway Company.

DATES: This exemption is effective on January 8, 1992. Petitions to stay must be filed by December 19, 1991 and petitions to reopen must be filed by December 30, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31955 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Edmund W. Burke, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: December 2, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-29328 Filed 12-6-91; 8:45 am]

BILLING CODE 7535-01-M

[Finance Docket No. 31966]

Notice of Exemption; TennRail Corp.—Acquisition and Operation Exemption—Corinth & Counce RR. Co.

TennRail Corportion (TRC), a noncarrier, has filed a notice of exemption to acquire and operate 26 miles of rail line, by purchase and acceptance of assignment of rail operating rights belonging to the Corinth & Counce Railroad Company (CCR).[1] In addition to acquiring and operating the rail line segments, TRC will acquire substantially all of CCR's other assets. The transaction is expected to be consummated on or about December 20, 1991.

The line to be purchased is located between Corinth, MS (milepost 0.0), and Counce, TN (milepost 16.0). The line to be acquired through assignment of rail operating rights is located between Sharp, MS (milepost 10.0), and Yellow Creek Port, MS (milepost 20.0).[2] Moreover, TRC will acquire from CCR: (1) 10 miles of yard track on the Corinth-to-Counce line; (2) locomotives; (3) rolling stock (by assignment of leases); and (4) all track material and other equipment inventories. After consummation of the transaction, CCR will cease operations over the lines, and TRC will become a class III carrier and the sole common carrier providing rail service to the shippers on the lines.

Any comments must be filed with the Commission and served on: Suzanne M. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Ave., NW., Washington, DC 20005-4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 2, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-29329 Filed 12-6-91; 8:45 am]

BILLING CODE 7035-01-M

[1] TRC is controlled by MidSouth Corporation (MidSouth), which also owns: MidSouth Rail Corporation, a class II carrier, MidLouisiana Rail Corporation, a class III carrier, and SouthRail Corporation, a class II carrier. MidSouth's continuance in control of TRC and its other carriers is the subject of a petition for exemption in Finance Docket No. 31967, Midsouth Corp.—Continuance in Control Exemption—TennRail Corp.

[2] This line segment is owned by the Tennessee Valley Authority and the Mississippi Agricultural and Industrial Board.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Rooms 1A and 1B of the Department of Labor Academy, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC, on Wednesday and Thursday, January 8 and 9, 1992, from 8:30 a.m. to 5 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the November 1991 Joint Board examination

in order to make recommendations relative thereto, including the minimum acceptable pass score.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: December 3, 1991.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 91-29394 Filed 12-6-91; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Registration of claims against Albania.
(2) Optional Form FCSC 1-91, Foreign Claims Settlement Commission.
(3) One-time.
(4) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. This information collection will be used by the Commission and the Department of State to assess the value of U.S. citizens' and companies' outstanding claims for property expropriated or otherwise taken by the Albanian Government, for use in negotiating an appropriate lump-sum claims settlement on claimants' behalf.
(5) 1,000 annual respondents at 2.0 hours per response.
(6) 2,000 annual burden hours.
(7) Not applicable under 3504(h).

Public comment on this item is encouraged.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-29359 Filed 12-6-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment by Consent Pursuant to the Clean Water Act; Bethlehem

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 29, 1991, a consent decree in *United States* v. *Bethlehem Steel Corporation*, Civil Action No. MJG-90-1202, was lodged with the United States District Court for the District of Maryland. This was one of the actions in the Administrator's Chesapeake Bay Compliance and Enforcement Initiative designed to halve the number of significant Clean Water Act violators in the Bay watershed by the end of 1990.

The complaint filed by the United States on May 1, 1990, under sections 311(b)(6)(B) and 309(b) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("Clean Water Act" or the "CWA"), 33 U.S.C. 1321(b)(6)(B) and 1319(b), alleged 3 discharges of reportable quantities of hazardous substances into the Patapsco River from Bethlehem's steel mill located at Sparrows Point, Maryland. The United States sought civil penalties not to exceed $50,000 for each violation of section 311 of the CWA, 33 U.S.C. 1321(b)(6)(B), except where the discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, in which case the United States could seek a penalty not to exceed $250,000 for each violation. The complaint also sought injunctive relief under section 309(d) of the Clean Water Act, 33 U.S.C. 1319(b).

The proposed consent decree requires Bethlehem to pay a civil penalty of $147,000, which is the statutory maximum absent willful negligence, less $1,000 per violation previously paid by Bethlehem to the State of Maryland for the same violations. Bethlehem is further required by the consent decree to implement a hazardous substance handling and management program. The decree includes stipulated penalties of $25,000 for each discharge of a reportable quantity of a hazardous substance during the life of the consent decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bethlehem Steel Corporation*, DOJ Ref. No. 90-5-1-1-3322. The proposed consent decree may be examined at the office of the United States Attorney, District of Maryland, United States Courthouse, 101 W. Lombard Street, Baltimore, Maryland 21201. Copies of the decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004 (202-347-7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $7.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-29306 Filed 12-6-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Involving Claims Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, set out in 28 CFR 50.7, notice is hereby given that on October 11, 1991, a proposed Consent Decree in *Covington* v. *Federal Deposit Insurance Corporation* (*In re*: *Covington*), Adv. No. 90–0234–W, was lodged with the United States Bankruptcy Court for the Northern District of Oklahoma. The Complaint in this case sought a declaration that plaintiffs have no liability to the United States Environmental Protection Agency ("EPA") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9601–9675, arising out of plaintiffs' ownership of the Automation Techniques, Inc. ("ATI") Site in Tulsa, Oklahoma.

The proposed Consent Decree requires the plaintiffs, Edward Leigh Covington and Theodore V. Anderson, to pay $500.00 each to the United States for reimbursement of response costs incurred by EPA at the ATI site. In return for these payments, plaintiffs are granted a covenant not to sue with respect to civil liability for reimbursement of response costs incurred by the United States in connection with the ATI Site under section 107(a)(4)(A) of CERCLA, 42 U.S.C. 9607(a)(4)(A), and with respect to civil liability for performance of actions at the ATI Site pursuant to administrative order under section 106(a) of CERCLA, 42 U.S.C. 9606(a). The covenant not to sue is conditioned upon the accuracy of financial statements submitted by plaintiffs to the Court, which reflect that the significant assets of plaintiffs are secured or encumbered by mortgages and that plaintiffs, either jointly or separately, do not have the ability to pay all of the CERCLA response costs incurred in connection with the ATI Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *Covington* v. *Federal Deposit Insurance Corporation* (*In re*: *Covington*), DOJ Ref. No. 90–11–2–625.

The proposed consent decree may be examined at the following locations: the Offices of the United States Attorney, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, suite 1200, Dallas, Texas 75202–2733; and, the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., P.O. Box 1097, Washington, DC 20004, telephone (202) 347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.00 ($.25 per page reproduction costs) payable to, "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–29305 Filed 12–6–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division; Notice Pursuant to the National Cooperative Research Act of 1984—Testing of Improved Tamper-Evident Closures for Baby Food—National Food Laboratory

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), The National Food Laboratory filed a written notification simultaneously with the Attorney General and the Federal Trade Commission on October 30, 1991, disclosing (1) the identity of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identity of the parties to this agreement and the general areas of planned activity are given below:

The current parties are the following:

Beech-Nut Nutrition Corporation, of Canajoharie, New York;

Gerber Products Company, of Fremont, Michigan;

H.J. Heinz Company, of Pittsburgh, Pennsylvania; and

The National Food Laboratory, Inc., of Washington, DC.

The area of planned activity is continuation of the efforts undertaken by the parties with closure companies pursuant to prior joint research and development ventures, which terminated by their terms on August 1, 1991, for the coordination of testing efforts to facilitate the prompt development of an improved tamper-evident closure for baby foods. The processors have reached tentative agreement as to the criteria and specifications that must be met by an improved tamper-evident closure. These features may be modified during the course of the project.

Any baby food processing company that is not a party to the agreement will be entitled to receive information concerning the research project on the condition that it (a) assure that there will not be premature public disclosure of the progress of the research and testing results, (b) prevent undue publicity concerning tampering and tamper-evident closures, (c) minimize the potential for confusion, misinformation and uncertainty concerning the development and use of an improved tamper-evident closure, and (d) protect the intellectual property rights of the parties.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–29304 Filed 12–6–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division; Notice Pursuant to the National Cooperative Research Act of 1984; Clean Heavy-Duty Diesel Engine Development, Southwest Research Institute

Notice is hereby given that, on November 4, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Clean Heavy-Duty Diesel Engine Development." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are:

Engine Manufacturer Participants

1. Caterpillar, Inc., Mossville, IL (March 18, 1991).

2. Cummins Engine Company, Columbus, IN (January 21, 1991).

3. Deere and Company, Waterloo, IA (March 27, 1991).

4. Hino Motors, Ltd., Tokyo, Japan (March 13, 1991).

5. Isuzu Motors Ltd. and Isuzu Advanced Engineering Center, Ltd., Kanagawa-Ken, Japan (March 22, 1991).

6. Iveco Fiat SpA, Torino, Italy (June 28, 1991).
7. Mitsubishi Motors Corp., Tokyo, Japan (March 18, 1991).
8. Nissan Diesel Motor Co., Ltd., Saitama-Ken, Japan (April 26, 1991).
9. Navistar International Transportation Corp., Melrose Park, IL (March 10, 1991).
10. Volvo Truck Corp., Goteborg, Sweden (January 28, 1991).

Component Manufacturer Participants

1. Allied-Signal, Inc. through its Garrett Automotive Group, Torrance, CA (August 27, 1991).
2. Chevron Research and Technology Company, Richmond, CA (September 24, 1991).
3. Lucas Automotive, Ltd., Powertrain Division, Troy, MI (July 31, 1991).
4. Robert Bosch GmBH, Stuttgart, Germany (August 26, 1991).
5. Zollner Company Limited Partnership, Fort Wayne, IN (September 11, 1991).

The purpose of the project is to develop a clean and efficient heavy-duty diesel engine to meet emissions and efficiency levels in the areas of oxides of nitrogen (NO_x); hydrocarbons (HC); particulate matter (PM); and an efficiency level of 45 to 48 percent as well as CO_2 emissions levels and to allow the engine to burn a broad range of liquid fuels. The major research and development tasks are: (1) Intake charge expansion cooling (turbo cooling); (2) combustion system optimization; (3) exhaust and gas recirculation; (4) reduction of oil consumption and oil derived particulates; (5) diesel spray jet development and mixing; and (6) in-cylinder diagnostics.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-29302 Filed 12-6-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division; Notice Pursuant to the National Cooperative Research Act of 1984; "Ultra-Low Emission Engine Program"

Notice is hereby given that, on November 12, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Ultra-Low Emission Engine Program". The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activity are given below.

The parties to the project are: Ford Motor Company, Advanced Powertrain, Allen Park, Michigan; Fuji Heavy Industries, Ltd., Tokyo, Japan; General Motors, Warren, Michigan; Honda R & D., Ltd., Saitama, Japan; Isuzu Motors, Ltd., Kanagawa-ken, Japan; Nissan Motor Co., Ltd., Yokosuka, Japan; and Suzuki Motor Corporation, Engine Design Division, Hamamatsu, Japan.

The purpose of the project is to develop the technology needed for a clean and efficient passenger car engine in terms of exhaust emissions, fuel economy and emissions durability. The major research and development tasks are: (1) Fuel mixture preparation; (2) design of the combustion system to improve engine-out emissions; (3) exhaust aftertreatment and improvement in heated catalysts; (4) development of an intelligent engine management system; (5) intake port design and air fuel management; (6) development of practical methods for improved engine lubrication system and reduced engine friction; and (7) development of a dynamometer-based cold start emissions test procedure.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-29303 Filed 12-6-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirements.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible data.

Revision

Employment Standards Administration

Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.
1215-0160.

LS–200; ESA–100; LS–271; LS–274; LS–201; LS–513; LS–267; LS–203; LS–204; LS–262.
On occasion.
Individual or Households; Businesses or other for-profit; Small businesses or organizations.
2–25,000 responses; 92,927 total hours.
1 min. to 300 min. per response.
14 forms.

The regulation and forms cover the submission of information relating to the processing of claims for benefits under the Longshore Act and its extensions.

Signed at Washington, DC, this 3d day of December, 1991.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 91–29387 Filed 12–6–91; 8:45 am]

BILLING CODE 4510–22–M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,288; Amerimark, Gnadenhutten, OH

TA–W–26,289; Ansewn Shoe Co., Bangor, ME

TA–W–26,336; Republic Engineered Steel, Inc., Cold Finish Bar Div., Williamantic, CT

TA–W–26,296; Crantec, Inc., Mars, PA

TA–W–26,335; Republic Engineered Steels, Inc., Cold Finished Bar Div., Gary, IN

TA–W–26,338; Republic Engineered Steels, Inc., Hot Rolled Bar Div., Chicago, IL

TA–W–26,312; Swayze Folding Box Co., Inc., Canton, PA

TA–W–26,313; Swayze Folding Box, Little Falls, NJ

TA–W–26,339; Republic Engineered Steels, Inc., Special Metals Div., Canton, OH

TA–W–26,350; Belden and Blake Corp., Bradford, PA

TA–W–26,347; Zimmerman & Jansen, Inc., Glenshaw, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–26,390; Mountain Valley Petroleum, Inc., Englewood, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,359; General Electric Corp., Saddle Brook, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,440; Premiere Acquisition Corp., Fairfield, VA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,301; Harrison Sales Co., Inc., Duncan, SC

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,337; Republic Engineered Steels, Inc., Cold Finished Bar Div, Beaver Falls, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,326; Dowell Schlumberger, Inc., Midland, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,374 and TA–W–26,375; Wellteck, Inc., Kalkasaka, MI & Mt. Pleasant, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,340; Rusty Clark Survey Co., Inc., Breaux Bridge, LA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,362; Halliburton Service, Sales Office, Casper, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,297 and TA–W–26,297A; Edwards Forest Industries, St. Maries ID and Princeton, ID

U.S. imports of softwood lumber declined absolutely and relative to US shipments in 1990 compared with 1989.

TA–W–26,351; Benchmark Geophysical Corp., Edmond, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,348; Adwest Minerals, Inc., Fort Stockton, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,414; Reliance Gas Marketing, Tulsa, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,263; Aeronca, Inc., Middletown, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,360; Halliburton Services, Gillete, WY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,361; Halliburton Services, Luling, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–26,276; Mid West Waltham Abrasives Co., Owosso, MI

A certification was issued covering all workers separated on or after August 20, 1990.

TA–W–26,439; Parform Foundations, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after September 30, 1990.

TA–W–26,268; Erica Shoes, Inc., Brooklyn, NY

A certification was issued covering all workers separated on or after August 20, 1990 and before September 30, 1991.

TA–W–26,391; National Tel-Tronics Div., (Assembly Dept), Meadville, PA

A certification was issued covering all workers separated on or after September 17, 1990.

TA–W–26,356; Deans Manufacturing Service, Okemah, OK

A certification was issued covering all workers separated on or after September 9, 1990.

I hereby certify that the aforementioned determinations were issued during the month of November, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 25, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–29385 Filed 12–6–91; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sextet Mining Corp.

[Docket No. M–91–96–C]

Sextet Mining Corporation, 1822 North Main Street, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its West Hopkins Mine (I.D. No. 15–15691) located in Hopkins County, Kentucky. The petitioner requests that MSHA's Decision and Order, granted on September 17, 1990, for docket number M–89–137–C be amended as follows: Amend paragraph 1(a) to require installation of a low-level carbon monoxide detection system in all belt entries; amend paragraph 1(b) to require locating the carbon monoxide monitoring devices so that the air is monitored at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry, except as provided in paragraph 1(c) and paragraph 10; and omit paragraph 11 because belt haulage entries to ventilate the working faces are not used in the mine.

2. B & M Coal Co.

[Docket No. M–91–102–C]

B & M Coal Company, Box 37, Dilliner, Pennsylvania 15327 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its B & M No. 2 Mine (I.D. No. 36–06126) located in Greene County, Pennsylvania. The petitioner proposes to use belt air to ventilate active working places and to install a low-level carbon monoxide detection system in all belt entries utilized as intake aircourses.

3. B & M Coal Co.

[Docket No. M–91–103–C]

B & M Coal Company, Box 37, Dilliner, Pennsylvania 15327 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its B & M No. 2 Mine (I.D. No. 36–06126) located in Greene County, Pennsylvania. The petitioner proposes to use a carbon monoxide monitoring system to replace existing point-type sensors.

4. Island Creek Coal Co.

[Docket No. M–91–104–C]

Island Creek Coal Company, P.O.Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 74.213 (roof support removal) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petitioner proposes to remove loose roof bolts in areas where the gob or shale has weathered away from the roof bolt exposing the massive self-supporting limestone roof.

5. Island Creek Coal Co.

[Docket No. M–91–105–C]

Island Creek Coal Company, P.O.Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 74.202 (protection from falls of roof, face and ribs) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petitioner proposes to remove loose roof bolts in areas where the gob or shale has weathered away from the roof bolt exposing the massive self-supporting limestone roof.

6. Atascosa Mining Co.

[Docket No. M–91–106–C]

Atascoas Mining Company, P.O. Box 850, Jourdanton, Texas 78026 has filed a petition to modify the application of 30 CFR 77.216–3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its San Miguel Lignite Mine (I.D. No. 41–02840) located in Atascosa County, Texas for impoundments I.D. No. 1211–TX09–02840–09 and 1211–TX09–02840–10. The petitioner proposes to inspect the ponds at monthly intervals instead of every seven days.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Administration, room 626, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 8, 1992. Copies of these petitions are available for inspection at that address.

Dated: December 2, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–29386 Filed 12–6–91; 8:45 am]

BILLING CODE 4510–13–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals to Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1990, and ending September 30, 1991.

Name and Title

Robert E. Allen—Associate General Counsel, Advice

Harold J. Datz—Chief Counsel to Board Member
Yvonne T. Dixon—Assistant General Counsel, Office of the General Counsel
Frederick Freilicher—Chief Counsel to Board Member
D. Randall Frye—Acting Deputy General Counsel
John E. Higgins—Solicitor
Susan Holik—Chief Counsel to Board Member
Gloria J. Joseph—Director of Administration
Barry J. Kearney—Deputy Associate General Counsel, Advice
Joseph E. Moore—Deputy Executive Secretary
S.F. Timothy Mullen—Deputy Director of Administration
Anne G. Purcell—Chief Counsel to Board Member
Mary M. Shanklin—Director, Office of Appeals
W. Garrett Stack—Deputy Associate General Counsel, Operations Management
Elinor H. Stillman—Chief Counsel to the Chairman
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary
Melvin J. Welles—Chief Administrative Law Judge.

Dated: Washington, DC, December 3, 1991.

By direction of the board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 91-29391 Filed 12-6-91; 8:45 am]

BILLING CODE 7545-01-M

NATIONAL SCIENCE FOUNDATION

Division of Polar Programs; Availability of the Final Supplemental Environmental Impact Statement for the United States Antarctic Program

AGENCY: National Science Foundation.

ACTION: Notice of availability of final supplemental environmental impact statement for the United States Antarctic Program.

SUMMARY: The National Science Foundation (NSF) has prepared this Final Supplemental Environmental Impact Statement (SEIS) on the U.S. Antarctic Program (USAP) in accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and with provisions of the Antarctic Treaty. The Final SEIS updates the 1980 Programmatic Environmental Impact Statement (PEIS) and assesses potentially significant environmental impacts of proposed program actions. A Draft SEIS was made available in January 1991 for public and agency comment. This Final SEIS incorporates changes to the Draft SEIS made in response to those comments and includes an appendix containing those comments and USAP's responses.

As the USAP is an endeavor continuing under unique and everchanging, scientific, logistic and international circumstances, the Final SEIS uses the 1989–1990 austral summer research season as a "snapshot" of USAP's activities. The Final SEIS was prepared in light of the NSF's Initiative for Safety, Environment and Health in Antarctica. In 1989, the NSF proposed, and subsequently received funds for, a major, multi-year Initiative to develop and implement a comprehensive approach to improving conditions associated with antarctic safety, environment and health conditions. The environmental goals of the Initiative include cleaning up residuals of past antarctic operations and bringing present antarctic operations into agreement with applicable U.S. laws and regulations; environmental provisions of the Antarctic Treaty; prevailing environmental attitudes; and, current technology as feasibly applied to the context of operation in Antarctica.

Four alternatives were considered by NSF for continuing and implementing environmental protection meausres for USAP facilities and their operations. Safety and health continued to be overriding priorities for all USAP activities under each of the alternatives. The alternatives differ mostly in the proportion of USAP resources devoted to environmental protection. An alternative of not continuing the USAP is not evaluated in this Final SEIS because specific directives from the Executive Branch require NSF to maintain an antarctic program.

Alternative 1 (no further action) would continue the program at the level of environmental protection in place during the baseline 1989–90 austral summer season. Alternative 2 (complete the Safety, Environment, and Health (SEH) initiative) would continue and complete the five-year SEH initiative begun in Fiscal Year 1990 and would use U.S. environmental laws and regulations as guidelines for environmental management. Alternative 3 (complete the SEH initiative and streamline USAP activities) would have the same environmental protection goals as Alternative 2 and, in addition, would enhance prevention of environmental impacts by consolidating activities and reducing the number of support personnel. Alternative 4 (increase environmental protection measures beyond those of the SEH initiative) would complete the SEH initiative, and would make environmental protection and the continued safety and health of personnel the overriding consideration of all USAP activities. Alternative 3 is NSF's preferred alternative.

ADDRESSES: Requests for copies of the Final SEIS should be mailed to Dr. Sidney Draggan, Environmental Officer, Office of the Environment, Division of Polar Programs, National Science Foundation, 1800 G Street, NW.—room 520, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Dr. Sidney Draggan, at (202) 357–7766.

SUPPLEMENTARY INFORMATION: The United States Antarctic Program (USAP) is the nation's program for scientific research and national presence in Antarctica. It is funded and managed by the Federal Government. The National Science Foundation (NSF) has overall funding and management (lead agency) responsibility for USAP and U.S. activities in Antarctica. NSF conducts detailed planning of logistics, and transmittal of logistics requirements to the Naval Support Force Antarctica, to the U.S. Coast Guard (primarily provision of icebreaker services), and to a civilian support contractor. NSF guides these support units in facilities management, design, planning, engineering, construction, and maintenance.

The USAP currently operates three permanent year-round stations in Antarctica (McMurdo, Amundsen-Scott South Pole, and Palmer Stations). In addition, aircraft refueling facilities and field camps are established at sites on the continent and along the coast each austral summer, from late October through late January. USAP scientists may also conduct research at stations operated by other countries. The USAP uses a number of vessels for research and for supplying coastal stations. The USAP operates in an extremely harsh environment. McMurdo and the South Pole are inaccessible during the period from late February through August and early October, respectively. Although Palmer Station is accessible throughout the year, USAP winter personnel there are isolated for several months.

Signed at Washington, DC this 4th day of December, 1991.

Dr. Sidney Draggan,

Environmental Officer, Division of Polar Programs, National Science Foundation.

[FR Doc. 91-29367 Filed 12-6-91; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal System for Acquiring Audiovisual Productions; Rescission

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Rescission of Office of Federal Procurement Policy (OFPP) Pamphlet No. 3, Federal System for Acquiring Audiovisual Productions.

SUMMARY: OFPP Pamphlet No. 3 is outdated and obsolete. The contracting system outlined in Pamphlet No. 3 is based on policies provided in OFPP Policy Letter 79–4, Contracting for Motion Picture Productions and Videotape Productions, November 28, 1979. OFPP plans to update and revise Policy Letter 79–4 during Fiscal Year 1992.

EFFECTIVE DATE: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Linda L. Mesaros, Office of Federal Procurement Policy, 725 17th Street, NW., suite 9013, Washington, DC 20503, (202) 395–3300.

Dated: December 3, 1991.

Allan V. Burman,

Administrator.

[FR Doc. 91–29341 Filed 12–6–91; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–86]

Possible Action in Response to the People's Republic of China's Intellectual Property Laws, Policies, and Practices; Notice of Trade Policy Staff Committee (TPSC) Public Hearing

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of Public hearing.

SUMMARY: A public hearing will be held on January 6–7, 1992, for the purpose of hearing views on possible action being considered in response to the People's Republic of China's Intellectual Property Laws, Policies and Practices. Written comments on this matter were requested in a **Federal Register** notice published on December 2, 1991 (56 FR 61278).

DATES: The deadline for submission of requests to testify is December 20, 1991; written testimony is due December 23, 1991; and the hearing will be held January 6 and 7, 1992. Rebuttal submissions will be due January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about the products under consideration for increased duties or other import restrictions should be directed to Mr. Lee Sands, Director, China and Mongolian Affairs, (202) 395–5050. Questions about the public hearing should be directed to Ms. Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, (202) 395–7210. Questions about filing written testimony should be directed to Ms. Dorothy Balaban, Staff Assistant to the Section 301 Committee, (202) 395–3432.

SUPPLEMENTARY INFORMATION: On May 26, 1991, pursuant to section 302(b)(2)(A) of the Trade Act of 1974, as emended ("the Trade Act"), the United States Trade Representative initiated an investigation of those acts, policies and practices of the Government of China that were the basis for identification of China as a priority foreign country under section 182 of the Trade Act. These included: (1) Deficiencies in China's patent law, in particular, the failure to provide product patent protection for chemicals, including pharmaceuticals and agricultural chemicals, (2) lack of copyright protection for U.S. works not first published in China, (3) deficient levels of protection under the copyright law and regulations, (4) inadequate protection of trade secrets, and (5) deficient enforcement of intellectual property rights, including rights in trademarks.

On November 26, 1991, the USTR decided to extend the investigation because the relevant issues are complex and complicated and require additional time to attempt to resolve. In accordance with section 304(a)(3)(B) of the Trade Act, the USTR must make her determinations under section 304(a)(1) no later than February 26, 1992. However, the serious effect that the acts, policies and practices of the Chinese government have on U.S. commerce indicate that USTR should be prepared to act swiftly if the USTR is unable to resolve all of the issues under investigation in the immediate future. Therefore, USTR has sought written comments on proposed determinations under section 304(a)(1) of the Trade Act (see 56 FR 61278), and has decided to hold a public hearing specifically on the following action being considered: to impose increased duties on certain products of the People's Republic of China to be drawn from the list of products set forth in the Annex to USTR's notice published in the **Federal Register** on December 2, 1991 (see 56 FR 61279–61282).

Legal Authority

Under section 301 of the Trade Act, the USTR is authorized, subject to the direction of the President, to take appropriate and feasible action to, *inter alia*, obtain the elimination of an act, policy or practice of a foreign government or instrumentality that is unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce. Section 301(c)(1)(B) expressly authorizes the USTR to impose duties or other import restrictions on the goods of a foreign country for such time as the USTR determines appropriate.

Section 301(c)(5) further provides that in taking such action the USTR shall give preference to the imposition of duties over the imposition of other import restrictions, and if an import restriction other than a duty is imposed, the USTR shall consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

Public Hearing

A public hearing on this matter will be held pursuant to section 304(b) of the Trade Act and in accordance with 15 CFR §§ 2006.7 through 2006.9. The hearing will commence at 10 a.m. on Monday, January 6, 1992, and continue on January 7 if necessary. The hearing will be held in Washington, DC, at a location to be announced in a subsequent **Federal Register** notice.

Requests to Testify. Interested persons wishing to testify orally must provide a written request to do so by noon on December 20, 1991, to Ms. Carolyn Frank, Executive Secretary to the Trade Policy Staff Committee, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506. In their request, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, Ms. Frank will notify the applicant of the time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a). Remarks at the hearing will be limited to 5 minutes.

Written Testimony. In addition, persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on December 23, 1991, to Ms. Dorothy Balaban at the address listed above. All written submissions must be filed in accordance with 15 CFR part 2006 8.

In order to assure each party an opportunity to contest the information provided by other parties, USTR will entertain rebuttal briefs filed by any party, in accordance with 15 CFR 2006.8(c), by noon on January 13, 1992.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 91-29488 Filed 12-6-91; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30013; File No. 265-18]

Market Transactions Advisory Committee

ACTION: Notice of meeting of the Securities and Exchange Commission Market Transactions Advisory Committee.

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet at 10 a.m. on December 18, 1991, in room 1C30 at the Commission's main offices, 450 5th Street NW., Washington, DC. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Jonathan Kallman, Division of Market Regulation (202) 272-2402, or Jerry Carpenter, Division of Market Regulation (202) 272-7470.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Market Transactions Advisory Committee ("Advisory Committee") hereby gives notice that it will meet at 10 a.m. on December 18, 1991, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC. The meeting will be open to the public.

The Advisory Committee was formed under section 17A(f) of the Securities Exchange Act of 1934. The Advisory Committee's responsibilities include assisting the Commission in identifying State and Federal laws that may impede the safe and efficient clearance and settlement of securities transactions and advising the Commission on whether and how to use its authority, under the Market Reform Act of 1990, to adopt, in certain circumstances, uniform Federal rules regarding the transfer and pledge of securities.

This will be the second meeting of the Advisory Committee. The purpose of the meeting will be to discuss organizational matters of the Advisory Committee and to establish subgroups to facilitate the Advisory Committee's work. The Advisory Committee will also consider the mission and composition of the subgroups.

Dated: December 2, 1991.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 91-29317 Filed 12-6-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

December 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ford Motor Co.
Depository Shares (rep. 1/1000 of share of Series A Cum. Conv. Pfd) (File No. 7-7637)
Stop & Shop Co's Inc.
Common Stock, $.01 Par Value (File No. 7-7638)
Chemed Corp.
Common Stock, $1.00 Par Value (File No. 7-7639)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 24, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-29313 Filed 12-6-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bangor Hydro-Electric Company
Common Stock, $5.00 Per Value (File No. 7-7640)
Kimco Realty Corporation
Common Stock, $.01 Par Value (File No. 7-7641)
Advanced Magnetics, Inc.
Common Stock, $.01 Per Value (File No. 7-7642)
Nuveen California Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7643)
Partners Preferred Yield II, Inc.
Series A Common Stock, $.01 Par Value (File No. 7-7644)
Partners Preferred Yield III, Inc.
Series A Common Stock, $.01 Par Value (File No. 7-7645)
Stop & Shop Companies, Inc.
Common Stock, $.01 Par Value (File No. 7-7646)
Van Kampen Merritt Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-7647)
Van Kampen Merritt Pennsylvania Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-7648)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 24, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-29314 Filed 12-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30017; File No. SR-NYSE-91-41]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Continuing Listing Fees

December 2, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange plans to institute, as of January 1, 1992, a rate increase affecting Continuing Listing Fees as follows:

	Current	Proposed
Continuing fees for domestic and foreign securities: [1]		
Per Share/ADR Fee: [2]		
0 to 2,000,000	$1,500	$1,600
Over 2,000,000	750	805
Minimum Fees: [3]		
1 to 10,000,000	14,630	15,700
10,000,001 to 20,000,000	21,950	23,550
20,000,001 to 50,000,000	29,260	31,400
50,000,001 to 100,000,000	43,780	47,000
100,000,001 to 200,000,000	58,400	62,700
Over 200,000,000	72,800	78,100
Maximum	500,000	[4]
Continuing fees for derivatives and other securities: Securities Issued: [5]		
1 to 10,000,000	7,315	7,850
10,000,001 to 20,000,000	10,975	11,775
20,000,001 to 50,000,000	14,630	15,700
50,000,001 to 100,000,000	21,890	23,500
100,000,001 to 200,000,000	29,200	31,350
Over 200,000,000	36,400	39,050

[1] See NYSE Listed Company Manual 902.02.

[2] Rate is per million shares or American Depositary Receipts ("ADRs")

[3] The Continuing Listing Fee is the greater of the minimum fee or the Per Share/ADR Fee.

[4] No change.

[5] This fee depends on the number of securities issued, as opposed to outstanding. See also letter from Ricki Spinner, Financial Planning and Analysis, NYSE, to Edith Hallahan, Branch of Exchange Regulation, Commission, dated November 25, 1991, amending the title of this fee from "Range Minimums" to "Securities Issued."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the fee change is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, automation, utilities and other costs associated with providing marketplace facilities and services.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-41 and should be submitted by December 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29315 Filed 12-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30018; File No. SR-NYSE-91-40]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendments to the Uniform Application for Securities Industry Registration or Transfer, Form U-4 and the Uniform Termination Notice for Securities Industry Registration, Form U-5

December 2, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the Uniform Termination Notice for Securities Industry Registration ("Form U-5") relate to a registered person's certification of the completeness and accuracy of his or her disciplinary record.[1] The changes are in response to the enactment of the Securities Acts Amendments of 1990 ("1990 Amendments") [2] and the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act").[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to submit a revision to the Form U-4, identical to a revision previously submitted to the Commission by the National Association of Securities Dealers, Inc. ("NASD").[4] This revision allows a previously registered person to certify as to the completeness and accuracy of his or her disciplinary record in the NASD's Central Registration Depository ("CRD") [5] system and alleviates the need to resubmit full details of all reportable items upon transfer of registration to a new broker-dealer.

The Exchange is also proposing to make certain amendments to Form U-4 and Form U-5. The proposed changes to these forms are the result of the enactment of the 1990 Amendments and the Remedies Act. These new laws, which expand the definition of statutory disqualification in section 3(a)(39) of the Act and expand the enforcement powers of the Commission, respectively, require that changes be made to the Forms U-4 and U-5. Certain minor changes to these forms were also requested by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA").

Form U-4 is being amended to provide for the following: [6]

Page 1—A minor change was made to the explanation for the Series 3 and Series 5 exams by adding the word "examination." This change was requested by the NFA for the Series 3 as there is some confusion as to why the box should be checked since it does not reflect a category of registration but only an exam application. Since the same situation was true for the Series 5, "examination" was added to that line as well.[7]

Page 3—Page 3 contains several changes to the disciplinary questions as a result of the enactment of the 1990 Amendments, which became effective November 15, 1990. This law specifies that certain actions taken by foreign financial regulatory authorities will be considered statutory disqualifications under the Act. In order to accommodate this law, the definition of a foreign financial regulatory authority is being added to the form, and language reflecting this change has been inserted in certain questions under Item 22, where appropriate.

The Remedies Act, which became effective October 15, 1990, provides the Commission with additional enforcement remedies for certain securities violations. Item 22D(5) has been added to reflect these enforcement powers, which include cease and desist authority and the ability to impose a civil money penalty.

Page 4—A minor change has been made to the firm certification on the bottom of page 4. The last sentence certifies that the firm has communicated with the employee's previous employers for the past three years. The CFTC had a five-year rule, which was noted in parentheses following this sentence. Due to a recent rule change, the CFTC now requires employment verification for three years, so the clause relating to commodities has been deleted.[8]

The Form U-5 is being amended to provide for the following: The instructions and form have been modified to include changes to the disciplinary questions consistent with Form U-4.[9] There has also been added an optional certification section so that previously filed information will not have to be filed on subsequent forms.[10]

2. Statutory Basis

Insofar as Forms U-4 and U-5 are used by the various self-regulatory organizations, including the Exchange, their use is consistent with section 6(b)(5) of the Act in fostering cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the information reported on the form assists the Exchange in its

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[1] The revised Forms U-4 and U-5 were attached to the rule filing as Exhibits 2 and 3, respectively, and are available from the Commission at the address noted in Item IV below and at the NYSE.

[2] Public Law No. 101-550, 104 Stat. 2713 (November 15, 1990).

[3] Public Law No. 101-429, 104 Stat. 931 (October 15, 1990).

[4] See Securities Exchange Act Release No. 28534 (October 12, 1990), 55 FR 42662 (approving File No. SR-NASD-90-45).

[5] The CRD is a computer data base containing current registration information as well as the regulatory and enforcement actions taken against securities industry personnel for access by the Commission, state regulators and certain self-regulatory organizations. Specifically, the CRD contains each broker-dealer's Form BD, which is filed with the CRD to register with the Commission and most state securities commissions, as well as to become a member of the NASD. Disciplinary information appears in the CRD on the Disclosure Reporting Page ("DRP") of Form U-4. See page 3 of Form U-4.

[6] Recently, the Commission approved a proposal by the NASD containing similar changes to Forms U-4 and U-5. See Securities Exchange Act Release No. 29896 (November 4, 1991), 56 FR 57541 (approving File No. SR-NASD-91-33).

[7] See Item 11 of Form U-4.

[8] See Commodities Exchange Act Rules 3.12(c)(1)(ii), 3.16(c)(1)(ii), 3.18(c)(1)(ii), and 3.44(a)(4)(i) [enacted March 8, 1988, 53 FR 8428 (March 15, 1988) and effective April 4, 1988)].

[9] For example, the NYSE proposes to add the definition of the term "foreign financial regulatory authority."

[10] See Item 16 of Form U-5.

responsibilities under section 6(c) of the Act in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-40 and should be submitted by December 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-29316 Filed 12-6-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Stop & Shop Companies, Inc.
Common Stock, $.01 Par Value (File No. 7-7631)
Seligman Quality Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7632)
Nuveen New York Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7-7633)
Van Kampen Merritt Pennsylvania Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-7634)
Van Kampen Merritt Quality Municipal Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7-7635)
Nuveen California Quality Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7-7636)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 24, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-29312 Filed 12-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. IC-18427; International Series Rel. No. 349; 812-7791]

Axe-Houghton Funds, Inc., et al.; Notice of Application

December 2, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Axe-Houghton Funds, Inc., Chancellor Funds, Inc., USF&G Money Market Funds, Inc., and USF&G Tax-Exempt Money Market Funds, Inc.

RELEVANT ACT SECTIONS: Exemption requested under Section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3-1.

FILING DATE: The application was filed on September 9, 1991 and amended on November 22, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, suite 228, 275 Commerce Drive, Fort Washington, PA 19034-1537.

FOR FURTHER INFORMATION CONTACT: C. David Messman, Senior Attorney, at (202) 272–2813, or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants are open-end management investment companies registered under the Act and organized as series investment companies. USF&G Review Management Corp. ("Review Management") serves as applicants' investment manager and USF&G Investment Services, Inc. ("Investment Services") serves as distributor of applicants' shares. Axe Core Investors, Inc. ("Axe Core") serves as investment adviser of the Axe Core International ADR Fund series (the "Fund") of Axe-Houghton Funds, Inc. Review Management, Investment Services and Axe Core are indirect wholly-owned subsidiaries of USF&G Corporation.

2. Applicants request that any order issued on the application apply to the Fund and other investment series of applicants,[1] and any other registered investment companies which become members of the USF&G Corporation "group of investment companies" as defined in rule 11a–3 under the Act.

3. Applicants wish to invest in the equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

4. Applicants seek relief from section 12(d)(3) of the Act and rule 12d3–1 thereunder to invest in the equity securities of foreign securities companies, including American Depositary Receipts ("ADRs") representing interests in such securities, to the extent permitted in the proposed amendments to rule 12d3–1. See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from Section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule.

2. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While "margin security" status is generally available only to securities that are traded principally in United States markets, the Board of Governors of the Federal Reserve System amended Regulation T in 1990 to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements from inclusion on its "List of Marginable OTC Stocks," securities issued by many foreign securities companies are not "foreign margin stocks," and thus are not "margin securities" under Regulation T. See 12 CFR 220.2 (i) and (q)(6). In addition, while some ADRs are "margin securities" as defined in Regulation T, many are not. This is particularly true in the case of ADRs representing securities issued by many foreign securities companies. Accordingly, applicants seek an exemption from the "margin security" requirements of rule 12d3–1.

3. Proposed amended rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the provisions of the proposed amendments to Rule 12d3–1 [Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)] as such amendments are currently proposed, and as they may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–29368 Filed 12–6–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The Fund is the only one of the applicants' investment series which has a present intention to invest in equity and convertible debt securities of foreign securities companies.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2535]

New York; Declaration of Disaster Loan Area

Nassau and Suffolk Counties and the contiguous county of Queens in the State of New York constitute a disaster area as a result of damages caused by a major coastal storm which occurred on October 30, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 30, 1992, and for economic injury until the close of business on August 31, 1992, at the address listed below: Disaster Area 1 Office, Small Business Administration, 360 Rainbow Boulevard South, 3rd Floor, Occidental Chemical Center, Niagara Falls, NY 14302, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	8.500
For Economic Injury:	
Business and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 253511 and for economic injury the number is 747300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 29, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–29330 Filed 12–6–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2534]

Washington; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated November 22, 1991, to the President's major disaster declaration of November 13, to include Ferry and Whitman Counties in the State of Washington as a disaster area as a result of damages caused by fires beginning on October 15 and continuing through October 24, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Asotin, Columbia, Franklin, Garfield, and Walla Walla in the State of Washington, and Latah and Nez Perce Counties in the State of Idaho may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 13, 1992, and for economic injury until the close of business on August 13, 1992.

The economic injury numbers assigned to this disaster are for 746600 the State of Washington and 746700 for the State of Idaho.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 29, 1991.

Win Allred,

Acting Assistant Administrator For Disaster Assistance.

[FR Doc. 91-29331 Filed 12-6-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 37-91]

Treasury Notes, Series AH-1993

Washington, November 26, 1991.

The Secretary announced on November 25, 1991, that the interest rate on the notes designated Series AH-1993, described in Department Circular—Public Debt Series—No. 37-91 dated November 21, 1991, will be 5½ percent. Interest on the notes will be payable at the rate of 5½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-29358 Filed 12-6-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 38-91]

Treasury Notes, Series V-1996

Washington, November 27, 1991.

The Secretary announced on November 26, 1991, that the interest rate on the notes designated Series V-1996, described in Department Circular—Public Debt Series—No. 38-91 dated November 21, 1991, will be 6½ percent. Interest on the notes will be payable at the rate of 6½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-29357 Filed 12-6-91; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 236
Monday, December 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 17, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for contract designation in European Currency Board futures
—Application of the New York Mercantile Exchange for contract designation in Sour Crude Oil Futures
—Application of the New York Mercantile Exchange for contract designation in Heating Oil—Crude Oil Spread Options
—Application of the New York Mercantile Exchange for contract designation in Unleaded Gasoline—Crude Oil Spread Options

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–29498 Filed 12–5–91; 2:28 pm]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Commission Meeting, Thursday, December 12, 1991

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 12, 1991, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, N.W., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: American Telephone and Telegraph Company's Petition for Rulemaking (CC Docket No. 91–64). Summary: The Commission will consider adoption of a *Report and Order* concerning the procedures used by interstate long distance carriers to verify customer orders for service.

2—Common Carrier—Title: Amendment of Part 22 of the Commission's Rules Concerning the Use of Cellular Telephones in Aircraft and Cell Enhancers in the Domestic Public Cellular Radio Service (CC Docket No. 88–411). Summary: The Commission will consider adoption of a *Report and Order* concerning the use of cellular telephones in aircraft and the routine use of cell enhancers.

3—Common Carrier—Title: Regulation of International Accounting Rates (CC Docket No. 90–337, Phase II). Summary: The Commission will consider adoption of a *First Report and Order* concerning U.S. carrier accounting and settlement arrangements with their foreign correspondents.

4—Common Carrier—Title: Part 22 Rule Making on Cellular Radio Comparative Renewal Proceedings (CC Docket No. 90–358). Summary: The Commission will consider adoption of a *Report and Order* concerning standards for filing cellular renewal applications and applications competing with those renewal applications and for conducting comparative renewal hearings.

5—Common Carrier, Office of International Communications—Title: Regulations of International Common Carrier Services. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning the regulation of international common carrier services.

6—Mass Media General Counsel—Title: Codification of the Commission's Political Programming Policies (MM Docket No. 91–168). Summary: The Commission will consider adoption of a *Report and Order* concerning political programming policies.

7—Mass Media—Title: Amendment of Part 76 of the Commission's Rules to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks (MM Docket No. 82–434). Summary: The Commission will consider adoption of a *Second Further Notice of Proposed Rule Making* which invites further comment on proposals to eliminate or modify the ban on common ownership of cable systems and broadcast TV networks.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

Dated: December 5, 1991.

Donna R. Searcy,

Secretary.

[FR Doc. 91–29491 Filed 12–5–91; 2:26 p.m.

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that 5:01 p.m. on Wednesday, December 4, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met jointly with the Board of Directors of the Resolution Trust Corporation in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T Timothy Ryan, Jr. (Office of Thrift Supervision), Mr. Stephen R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: December 5, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary

[FR Doc. 91–29492 Filed 12–5–91; 2:27 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 56, No. 236
Monday, December 9, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 919

[Docket No. FV-91-250]

Peaches Grown in Mesa County, Colorado; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

Correction

In proposed rule document 91-7279 beginning on page 12865 in the issue of Thursday, March 28, 1991, make the following correction:

On page 12866, in the first column, in the file line at the end of the document, "FR Doc. 91-7229" should read " FR Doc. 91-7279".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Forest Service

National Commission on Wildfire Disasters

Correction

In notice document 91-26766, appearing on page 56625, in the issue of Wednesday, November 6, 1991, make the following corrections:

1. In the second column, the name of the commission should read as set forth above.

2. In the same column, under the heading **SUMMARY**, in the second and sixth lines, "Wildlife" should read "Wildfire".

3. In the same column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the second line, "Pendelton" should read "Pendleton".

4. In the same column, under the heading **SUPPLEMENTARY INFORMATION**, in the second line, "Wildlife" should read "Wildfire".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911183-1283]

RIN 0648-AE46

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In proposed rule document 91-28301, beginning on page 59922, in the issue of Tuesday, November 26, 1991, make the following correction:

On page 59924, in the second column, in the **Authority:**, citation, "1802" should read "1801".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Correction

In notice document 91-22346 beginning on page 47069 in the issue of Tuesday, September 17, 1991, make the following correction:

On page 47070, in the first column, in the file line at the end of the document, "FR Doc 91-22340" should read "FR Doc 91-22346".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs Invitation to Apply for New Awards for Fiscal Year 1992

Correction

In notice document 91-13909 beginning on page 27156 in the issue of Wednesday, June 12, 1991, make the following correction:

On page 27158, in the third column, in the file line at the end of the document, "FR Doc. 91-1309" should read "FR Doc. 91-13909"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In rule document 91-24169, beginning on page 50652, in the issue of Tuesday, October 8, 1991, and corrected in the issue of November 25, 1991, on page 59331, the following corrections are reprinted correctly below:

§ 520.2260b [Corrected]

2. On page 50653, in the second column, in § 520.2260b, in the first line, "Section 520.2260c" should read "Section 520.2260b".

In the same document, on the same page, in the second column, in correction number 3, make the following correction:

§ 520.2260c [Corrected]

3. On page 50653, in the same column, in § 520.2260c, in the first line, "Section 520.2260b" should read "Section 520.2260c".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91E-0369]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fludara

Correction

In notice document 91-27750, beginning on page 58388, in the issue of Tuesday, November 19, 1991, make the following corrections:

On page 58389, in the second column, in the fourth full paragraph, in the third and eighth lines, "1991" should read "1992".

BILLING CODE 1505-01-D

federal register

Monday
December 9, 1991

Part II

Department of Energy

10 CFR Part 820

Procedural Rules for DOE Nuclear Activities; Proposed Rule and Public Hearing

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. NS-RM-91-820]

Procedural Rules for DOE Nuclear Activities

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) is proposing procedural rules to be used in applying its substantive rules, regulations and orders relating to nuclear safety (DOE Nuclear Safety Requirements). The proposed procedural rules are intended to be an essential part of the framework through which DOE deals with its contractors and other persons to ensure its nuclear facilities are operated in a manner that protects the public health and safety and the environment. In particular, the proposed rules would implement the provisions of the Price-Anderson Amendments Act of 1988 (Pub. L. No. 100-408, August 20, 1988) (PAAA) which subjects DOE contractors to potential civil and criminal penalties for violations of applicable DOE Nuclear Safety Requirements.

DATES: Written comments (20 copies) may be submitted to the address listed below by February 3, 1992. A hearing will be held on January 13, 1992. Request to speak at hearing must be submitted on or before January 8, 1992.

ADDRESSES: Comments should be addressed to: Keith Christopher, Office of Nuclear Safety, NS-30, room 8H-089, Docket No. NS-RM-91-820, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-7594 or FTS 896-7594.

A hearing will be held at: 9 a.m., Auditorium Building, U.S. Department of Energy, 19901 Germantown Road (Route 118), Germantown, Maryland.

The envelope and written comment should indicate the docket number. Written comments and hearing testimony may be examined between 9 a.m. and 4 p.m. Monday through Friday at: U.S. Department of Energy, Freedom of Information Reading Room, room 1E-190, Docket No. NS-RM-91-820, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-6020 or FTS 896-6020.

FOR FURTHER INFORMATION CONTACT:

Keith Christopher, Office of Nuclear Safety, NS-30, room 8H-089, Docket No. NS-RM-91-820, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-7594 or FTS 896-7594

or

Ben McRae or Susan Kuznick, Office of General Counsel, GC-31, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-6975 or FTS 896-6975.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Inquiry
A. Applicable Nuclear Safety Requirements
B. Relationship With M&O Contractors
C. Treatment of Nonprofit Educational Institutions
D. Proposed Enforcement Policy
III. Proposal
IV. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Review Under Executive Order 12612
V. Public Comment Procedures
A. Written Comments
B. Public Hearing

I. Introduction

DOE owns numerous nuclear facilities. To a large extent, DOE has continued the practice of its predecessors to contract with private industry and educational institutions to operate these facilities. The use of contractors provides DOE with expertise and resources which otherwise would not be readily available for carrying out its missions.

Recently, DOE has undertaken a thorough review of operations at its nuclear facilities. In particular, DOE has been examining the performance of its contractors in achieving the goals of protecting the public health and safety and the environment. As a result of its review, DOE is taking steps to improve its ability to enforce its nuclear safety requirements. DOE also is taking steps to provide contractors with incentives to act in a manner consistent with these requirements and to penalize inconsistent action.

When Congress enacted the PAAA, it considered the treatment of DOE contractors and renewed DOE's authority to indemnify these contractors for public liability arising from a nuclear incident. In addition, the PAAA made most DOE contractors so indemnified, and their subcontractors and suppliers, subject to civil and criminal penalties for violations of applicable DOE nuclear safety requirements.

II. Notice of Inquiry

On September 21, 1989, DOE published a Notice of Inquiry and Request for Public Comments on Implementation of the Price-Anderson Amendments Act of 1988 Civil and Criminal Penalty Authority, (NOI). 54 FR 38865 (September 21, 1989). The NOI set forth the background and framework of the penalty provisions of the PAAA. It also indicated that adapting the NRC enforcement policy to DOE "may be the preferred option" for developing a DOE enforcement policy that addresses mitigation factors.

DOE received comments in response to this NOI from nineteen (19) parties: Six current DOE non-profit management and operating (M&O) contractors statutorily-exempt from civil penalties (Battelle Memorial Institute, Fermi National Accelerator Laboratory, University of California, University of Chicago, Associated Universities, Inc., and Princeton University); five current DOE for-profit M&O contractors (Kaiser Engineers Hanford, EG&G, Inc., Martin Marietta Energy Systems, Inc., Westinghouse Electric Corporation, and General Electric Company); two current DOE non-profit contractors not statutorily-exempt from civil penalties (Oak Ridge Associated Universities and Southeastern Universities Research Associations); one non-M&O DOE contractor (Nuclear Fuel Services); one organization of research universities (Council on Governmental Relations); the American Nuclear Energy Council, which represents certain organizations within the nuclear industry; the law firm of Powell, Goldstein, Frazer & Murphy; Congressman Fortney H. (Pete) Stark; and the Section of Public Contract Law of the American Bar Association.

Comments on the NOI generally addressed issues in four broad categories: (1) The applicable Nuclear Safety Requirements; (2) the effect of PAAA penalty implementation on M&O contractors; (3) the treatment of nonprofit educational institutions; and (4) the DOE General Statement of Enforcement Policy. A summary of the major comments and our responses follows:

A. Applicable Nuclear Safety Requirements

Seventeen of the nineteen parties who provided comments urged DOE to review its Nuclear Safety Requirements and provide a specific and concise delineation of those requirements the violation of which would subject persons to PAAA penalties. These comments indicated it was important that the Nuclear Safety Requirements that will be the subject of enforcement be clearly described and understood by parties expected to be in compliance.

One comment noted that because existing Nuclear Safety Requirements contained in DOE Orders were developed without regard to their use for assessing penalties, DOE should review and modify, as needed, the existing DOE Orders with a view to their new use for the imposition of penalties. Another comment stated that the present body of DOE Orders and Order supplements is outmoded, irrelevant, unclear or inconsistent, leading to different approaches among DOE offices and that DOE should commence a separate rulemaking to adopt new nuclear-safety standards.

DOE has carefully reviewed the comments concerning what nuclear safety requirements should be the basis for civil penalties under the PAAA. As an initial matter, DOE reaffirms the validity of all existing DOE rules, orders or regulations relating to nuclear safety, including all the DOE Orders issued as Directives. These existing requirements were established pursuant to the Department's broad authority under the Atomic Energy Act to issue rules, orders and regulations to govern the conduct of activity under that Act in a manner that protects the public health and safety and the environment. Passage of the PAAA has not changed the obligation of contractors to comply with the existing requirements or their responsibilities under the Atomic Energy Act and their contracts.

DOE recognizes, however, the legitimate concerns of its contractors for clarity and certainty concerning the requirements that will be the subject of PAAA civil penalties. DOE also has taken into account that most of the existing Nuclear Safety Requirements and contracts were adopted prior to the enactment of the PAAA. After careful consideration of the various factors, DOE is proposing in § 820.20(d) to refrain from imposing any PAAA civil penalties on the basis of DOE Nuclear Safety Requirements that are not: (1) Regulations set forth in the Code of Federal Regulations (CFR); (2) Compliance Orders issued by the Secretary; or (3) a program, plan or other provision required to implement a CFR regulation or a Compliance Order.

DOE is reviewing its Nuclear Safety Requirements and intends to propose regulations to revise and update these requirements where appropriate. The rulemaking process will permit contractors and other interested persons an opportunity to express their views on particular requirements and to clarify any ambiguity in the existing requirements.

Initially, DOE intends to set forth Nuclear Safety Requirements in 10 CFR parts 820, 830, 834, 835. In addition to procedural rules, part 820 will contain substantive provisions, such as the information requirements in § 820.11. Part 830 will set forth substantive rules for the operation of DOE nuclear facilities. Parts 834 and 835 will set forth rules for the protection of the public, facility workers, and the environment from radiation.

In addition, in order to ensure protection of the public health and safety and the environment during the transition to this more formalized regulatory structure, DOE is proposing in subpart G of part 820 a specific regulatory provision concerning assessment of PAAA civil penalties for violations of technical specifications and operational safety requirements that apply to each reactor and non-reactor nuclear facility. Technical specifications and operational safety requirements form the basic conditions, limits and other requirements to control operation of DOE nuclear facilities such that the health and safety of workers and the public are protected. Existing technical specifications and operational safety requirements and any changes thereto have been developed by the contractors themselves and, in most cases, have been approved by DOE. To the extent existing technical specifications and operational safety requirements do not relate to nuclear safety, DOE will not assess PAAA civil penalties.

B. Relationship with Contractors

Several comments addressed the effect of the PAAA on the financial arrangements between DOE and its contractors. One comment noted that the introduction of PAAA penalties is a fundamental change in the contracting relationship and must be accompanied, if implemented, with changes to the fundamental M&O contract provisions, including increased fees. One comment stated that a contractor's liability should be proportionate to its potential benefit under the contract. Another stated that DOE should take into account that commercial, licensed nuclear facility operators may have a financial incentive to comply with applicable requirements, while a DOE M&O contractor has no similar financial incentive. This comment stated that any cost incurred by an M&O contractor to comply with Nuclear Safety Requirements should be reimbursed by the Government. Several comments stated that penalty assessments should be addressed in the award fee determination so that the maximum amount of penalties assessed would not exceed the amount of award fee paid.

DOE has carefully considered the relationship between enforcement of DOE Nuclear Safety Requirements and the financial arrangements between DOE and its contractors. DOE presented the award fee system to Congress as the means by which safety incentives were incorporated into DOE's major nuclear contracts, but Congress enacted the PAAA penalty provisions to provide, we believe, additional safety incentives for DOE contractors. See 134 Cong. Rec. 113, p. H6127, August 2, 1988. The obligation to comply with DOE Nuclear Safety Requirements and the liability for civil and criminal penalties for violations of these requirements are independent of any contractual arrangements and cannot be modified or eliminated by the operation of a contract. Therefore, DOE does not plan to make adjustments to a contractor's paid award fee or penalty assessments to prevent contractors from incurring losses through both an award fee reduction and a penalty assessment. Thus, it would be possible for a contractor to receive a low award fee because of generally poor safety performance and penalties for one or more specific violations of Nuclear Safety Requirements.

DOE recognizes that the PAAA imposes a greater risk of liability on its contractors. Accordingly, DOE recently issued a final rule amending its Acquisition Regulations to change the structure and amounts of fees to be paid its profit making and fee bearing M&O contractors. 56 FR 28099 (June 19, 1991). That rule provides an enhanced award fee structure with the potential for M&O contractors to earn higher fees, provided they comply with DOE Nuclear Safety Requirements.

One comment stated that DOE must establish a realistic baseline of the conditions that exist at each facility and identify when a facility is not currently in compliance with the appropriately identified regulatory requirements. On November 2, 1990, DOE requested each DOE contractor subject to PAAA penalties to: (1) Confirm that the contractor is in compliance with all current technical specifications and operational safety requirements, or (2) indicate that the contractor is in noncompliance with one or more technical specifications or operational safety requirements, identifying what corrective action the contractor intends to take and on what schedule, and/or (3) indicate that one or more technical specifications or operational safety requirements have been determined to be inapplicable to the facility operated by the contractor, and identify the

specific modifications to the technical specifications or operational safety requirements that are necessary and a schedule for making such modifications. DOE will consider this information when determining whether to assess PAAA civil penalties. Moreover, the November 2 request indicated that "no civil penalties will be imposed for instances of noncompliance identified in response to [that request] and for which prompt corrective action approved by the appropriate PSO is proposed and taken."

Other comments stated that: DOE should recognize its supervisory responsibility and leadership role in the decision-making at a DOE facility; DOE should recognize that the M&O contractors are subject to Government funding limitations relating to capital improvements, manpower, equipment, and time constraints; no contractor should be subject to enforcement action if the contractor had no responsibility for creating the violation or where DOE failed to fund the measures necessary for correction of the violation; the Secretary should take into account the statutorily authorized "ability to pay" and "effect on ability to continue to do business" in determining the amount of any civil penalty assessed against a contractor; DOE should take into account whether the contractor had control over the events which led to the violation, the predictability of the violation and the events leading to it, the precautions taken by the contractor (or lack of precautions) with respect to the activity leading to the violation, whether the contractor knew or should have known that the action being undertaken constituted a violation and was reasonably preventable by the contractor, the extent of management controls, and whether there has been a breakdown of management controls. All of these concerns have been addressed in the proposed General Statement of Enforcement Policy, appendix to part 820.

C. Treatment of Nonprofit Educational Institutions

The PAAA authorizes the Secretary to determine by rule whether nonprofit educational institutions should receive automatic remission of PAAA civil penalties. Most of the comments on this issue urged that the Secretary exclude from civil penalties, or provide automatic remission of any civil penalties to, nonprofit educational institutions, and their subcontractors and suppliers. Only one comment expressed the view that neither "certain persons" (listed in the statute as exempt from civil penalties), 42 U.S.C. 2282a(d), nor educational institutions, (to whom the Secretary may, by statute, grant automatic remission of civil penalties, 42 U.S.C. 2282(b)(2)), should be exempt from the civil penalties of the PAAA, "because the financial risk should be the same for all M&O contractors."

As discussed below, DOE is proposing in § 820.20(c) that all nonprofit educational institutions should receive automatic remission of PAAA civil penalties, and that nonprofit educational institutions that are subcontractors and suppliers to other DOE contractors also receive automatic remission. DOE recognizes that the contractors that are statutorily exempt from PAAA civil penalties are nonprofit educational institutions except for one, which is a for-profit corporation operating on a not-for-profit basis for DOE (American Telephone and Telegraph Company and its subsidiaries operating Sandia National Laboratory). In the interest of fairness, DOE believes that all nonprofit educational institutions should similarly be free from the financial burden of PAAA civil penalties.

DOE emphasizes that neither the exemption from nor the automatic remission of PAAA civil penalties relieves any person from the obligation to comply with DOE Nuclear Safety Requirements. DOE intends to investigate, issue Notices of Violation, and take all other appropriate action with respect to violations of DOE Nuclear Safety Requirements by persons granted either an exemption from or a remission of PAAA civil penalties.

D. Proposed Enforcement Policy

In the NOI, DOE discussed three alternatives for a General Statement of Enforcement Policy that would inform DOE contractors, subcontractors and suppliers how DOE plans to exercise its enforcement discretion with respect to PAAA civil penalties. The NOI indicated the preferred option was to adapt the NRC policy statement on its enforcement activities to DOE's needs.

Two comments urged that DOE adopt a simplified multi-level penalty system (alternative 2), which takes into account DOE's unique situation rather than simply transferring wholesale the enforcement policies of any other agency, such as the NRC. An opposing view was expressed by one comment which stated that adopting a simplified multilevel penalty system would not afford the flexibility that the PAAA authorizes for the determination of the amount of the penalty to be assessed. Another comment stated that none of the three enforcement policy alternatives set forth in the NOI are adequate and that DOE should adopt an enforcement policy tailored to the needs of DOE, utilizing, where appropriate, the best features of other agency enforcement policies. Most comments on this issue rejected alternative 3 which would impose penalties that relate directly to the cost to the Government of nuclear safety violations, or require the contractor to take corrective actions at its own expense.

DOE has decided to propose an enforcement policy based on the system used by the NRC, modified to reflect DOE's special circumstances. In general, the proposed enforcement policy would implement PAAA civil penalties on the basis of the severity of a violation, taking into account any relevant mitigating factors, or factors suggesting that escalation of the base civil penalty is appropriate.

III. Proposal

DOE is proposing procedural rules that are intended to be an important part of the framework through which DOE deals with its contractors and other persons to ensure its nuclear facilities are operated in a manner that protects the public health and safety, the environment and facility workers. In particular, the proposed procedural rules would be used to determine whether to impose the civil penalties authorized by the PAAA, and if so, what the magnitude of the civil penalties should be.

The proposed procedural rules would be part 820 of title 10 of the Code of Federal Regulations. Proposed part 820 consists of six subparts and an appendix. Proposed subpart A sets forth rules of general applicability. Proposed subpart B deals with enforcement proceedings, including the assessment of civil penalties. Proposed subpart C provides for the issuance of Compliance Orders. Proposed subpart D provides for interpretations and rulings. Proposed subpart E provides for granting exemption relief. Proposed subpart F sets forth the procedure for referring criminal violations to the Attorney General. Proposed subpart G would codify the requirement that all DOE contractors must comply with applicable technical specifications and operational safety requirements. Proposed appendix 1 sets forth the General Statement of Enforcement Policy.

A. Subpart A

1. Purpose and Scope.

Proposed § 820.1 describes the scope of the procedural rules. Proposed paragraph (a) makes clear the scope is broad enough to cover all persons

subject to DOE's jurisdiction. The applicability of the proposed procedural rules, as well as the proposed Nuclear Safety Requirements in parts 830, 834 and 835, is neither dependent on any contractual term or condition nor modifiable by any contractual term or condition. Limitations on the assessment of PAAA civil penalties under the proposed rules are set forth in the scope paragraph of proposed subpart B.

2. Definitions

Proposed § 820.2 contains definitions for many of the terms used in the proposed rules. To a large extent, these definitions are self-explanatory. There are several items in the definitions, however, which should be noted.

The proposed definitions of the "Secretary", the "General Counsel", and the "Director" indicate these terms also include any person to whom the identified official has delegated a particular function; provided that, a function cannot be delegated in a manner that violates the requirement in proposed § 820.3 concerning the separation of functions. Thus, the Secretary could delegate the handling of many of the administrative functions assigned him under the proposed rules, such as selection of an administrative law judge to serve as the Presiding Officer in a PAAA adjudication. In addition, the proposed definition of the Director indicates that the functions assigned to the Director would be assigned to the Deputy Assistant Secretary for Naval Reactors with respect to matters relating to Naval nuclear propulsion.

The proposed definition of "DOE Official" is used to designate the person in charge of an action under the proposed rules. For example, the term "DOE Official" is used in proposed § 820.09 to indicate the authority in that section could be exercised by whomever is in charge of a particular action, such as the Director with respect to an investigation or the General Counsel with respect to an interpretation.

The proposed definition of "Presiding Officer" describes the role of the administrative law judge who is in charge of a PAAA adjudication. As the DOE Official in charge of the adjudication, a Presiding Officer would be granted broad authority to take all actions necessary or appropriate to conduct a fair and impartial adjudication, to elicit all the facts fully, to adjudicate all issues, and to avoid delays. Among his powers, the Presiding Officer could (1) establish a schedule, (2) require attendance at conferences to settle, simplify, or expedite an enforcement proceeding, (3) rule upon motions, requests, offers of proof, and procedural questions, and issue all necessary orders, (4) exercise all the evidentiary measures in proposed § 820.09, (5) admit or exclude evidence, and (6) decide all questions of fact, law, or discretion. A Presiding Officer, however, could not consider the validity of a regulation or interpretation issued by DOE.

The proposed definition of "Department" and "DOE" indicate these terms are intended to include any of the predecessors of the Department of Energy.

The proposed definition of "DOE Nuclear Safety Requirements" is written broadly to encompass all existing and future rules, regulations, and orders which pertain to matters of nuclear safety in connection with DOE's nuclear activities, including any DOE Directive or other order issued without notice and comment and any program, plan or other provision intended to implement a rule, regulation, order or DOE's responsibilities under the Atomic Energy Act or any other statute that relates to DOE nuclear activities. For example, technical specifications would constitute Nuclear Safety Requirements. DOE Nuclear Safety Requirements also would include any regulations DOE might propose to set forth or revise an existing Nuclear Safety Requirement or to adopt a new requirement. DOE Nuclear Safety Requirements also would include any Compliance Order issued pursuant to proposed Subpart D. As discussed previously, even though the proposed definition is broad enough to encompass all requirements that contribute to the protection of the public health and safety, the environment, and facility workers, DOE intends to assess civil penalties only for violations of those Nuclear Safety Requirements set forth in proposed § 820.20(d), that is, (1) regulations set forth in the CFR, (2) Compliance Orders, and (3) programs, plans or other provisions that implement these regulations or orders.

The proposed definition of "remedy" indicates DOE has the authority to take whatever action is necessary or appropriate to protect the public health and safety and the environment. DOE anticipates the issuance of Notices of Violation and the assessment of the civil penalties authorized by the PAAA would be primary remedies for violations of DOE Nuclear Safety Requirements. A remedy, however, could mandate the taking or cessation of any action necessary or appropriate to achieve compliance with the Atomic Energy Act, any other statutory provision that relates to DOE nuclear activities and for which DOE is responsible, or a DOE Nuclear Safety Requirement. Likewise, the remedy could be the modification, suspension, or termination of a contract. Remedies under part 820 are not intended to exclude any other remedies that might be available to DOE. For example, in addition to a part 820 remedy, DOE might pursue a contractual remedy to the extent a violation of a Nuclear Safety Requirement also represents a violation of the terms and conditions of a contract.

The proposed definition of "PAAA adjudication" is used to denote that portion of the enforcement process which commences when a respondent requests an on-the-record adjudication of an assessment of a civil penalty and terminates when the Presiding Officer files an initial decision. An administrative law judge would preside over a PAAA adjudication of which the sole purpose would be to determine whether there was a basis for the assessment of a civil penalty and, if so, whether an appropriate amount was assessed.

The proposed definition of "person" is the same as the definition in the Atomic Energy Act. When used in connection with the assessment of PAAA civil penalties, person would refer only to DOE contractors and their subcontractors and suppliers since PAAA civil penalties can be assessed only against these persons. The definition of person, however, would encompass affiliated entities. Thus, the parent organization of a contractor would be responsible for any penalty assessed against the contractor.

The proposed definition of "filing" makes clear that documents filed in a proceeding under proposed part 820 must be provided to the Hearing Clerk and served on the person to whom the document is addressed. No computation of any time period would begin until both elements of filing are complied with.

3. Separation of Functions

Proposed § 820.3 would create a clear separation between the investigative/prosecutorial function and the decision-making function when a respondent requests an on-the-record adjudication of the assessment of a civil penalty. The Director would be the person responsible for investigating and prosecuting administratively possible violations of DOE Nuclear Safety Requirements. Once the formal, on-the-record adjudication of the assessment of a civil penalty commences, the Director would be prohibited from any *ex parte* communication with any person who

might make a decision on the basis of the record in the case or any person who might advise the decision maker. The Presiding Officer during a PAAA adjudication would be an administrative law judge who would be prohibited from any activity, association, or consultation inconsistent with his decision-making function.

4. Conflict of Interest

Proposed § 820.4 would prohibit a DOE Official from participating in any action where he had a financial interest or any other relationship that would make his participation inappropriate. It also would permit a person with an interest in an action to request the General Counsel to disqualify a DOE Official from participation in an action because of a conflict of interest. In the case of a PAAA adjudication, a motion would be filed with the Presiding Officer. Any request to disqualify would have to be accompanied by an affidavit setting forth the alleged conflict of interest.

5. Service

Proposed § 820.05 discusses service under the proposed rules. In general, service could be made either by personal delivery or by mail. The DOE Official could authorize or require other means, including express mail. Proof of service could be shown by the written acknowledgement of the person served, a certificate of service, or an affidavit of the server.

The proposed section makes clear that a document would have to be served when it was filed with the Hearing Clerk. In a PAAA adjudication, any document filed with the Hearing Clerk would also have to be served on the participants in the proceeding. In situations where the filed document was addressed to the DOE Official in a proceeding, the act of filing would constitute service on the DOE Official and the Hearing Clerk would be responsible for providing the DOE Official with a copy of the filed document.

6. Computation and Extension of Time

Proposed § 820.6 discusses time periods under the proposed rules. In computing time periods, the day on which a period commenced would not be included. Saturdays, Sundays, and Federal legal holidays would be included, except where the period would expire on a Saturday, Sunday or Federal legal holiday in which case the period would be extended to include the next business day. When service was made by mail, five days would be added to the time period. When service was made by express mail, two days would be added. The DOE Official could extend any time period.

No time period that commenced with the filing of a document would commence until service was complete on the addressee of the document. In those cases where a document was deemed filed, it also would be deemed served at the same time. For example, proposed § 820.37 provides that an initial order would be deemed filed as a final order thirty days after the initial order was filed and that civil penalties must be paid within thirty days after the final order was filed. If an initial order was filed and served on the addressee by mail, then thirty-five days later the initial order would be deemed filed as a final order. Since service of the final order is deemed to occur at the same time the final order was deemed filed, then thirty days later the civil penalties would have to be paid.

7. Questions of Policy and Law

Proposed § 820.8 discusses the certification of questions of policy and law. In general, there would be no administrative appeal of rulings, orders, and other decisions by a DOE Official during an action under the proposed rules. A Presiding Officer, however, could determine that there existed an important question of law or policy for which there was substantial grounds for difference of opinion and that an immediate decision would materially advance a PAAA Adjudication or that a decision at the conclusion of the proceeding would be inadequate or ineffective. In such a case, the Presiding Officer could certify a question to the Secretary. Within thirty days of the certification, the Secretary would issue an order discussing the certified question or dismissing the certification. Ordinarily the order would be based on the certification by the Presiding Officer, but additional information and briefs could be requested.

8. Evidentiary Procedures

Proposed § 820.8 would give a DOE Official broad authority to gather information in connection with an action under the proposed rules. The DOE Official could sign, issue and serve subpoenas and Special Report Orders (SRO's), administer oaths, take sworn testimony, compel attendance of and sequester witnesses, and compel production of any records, letters, memoranda, or other relevant documents and of tangible evidence.

9. Special Assistant

Proposed § 820.9 recognizes the highly technical nature of actions under the proposed rules and would provide a DOE Official with the option of using a special assistant to assist in explaining, understanding, developing, and resolving technical issues that arise in connection with an action under the proposed rules. The special assistant could brief the DOE Official on technical matters, question witnesses, or serve as a special master to hear presentations by the parties on technical issues. Special assistants could be employees of DOE, the Nuclear Regulatory Commission or other governmental agencies, or consultants from the private sector. Special assistants would be subject to the rule against conflict of interest.

10. Hearing Clerk

Proposed § 820.10 describes the role of the Hearing Clerk, an office which DOE intends to establish to handle many of the administrative matters in connection with proceedings under the proposed rules. The Hearing Clerk would be responsible for maintaining a docket for each enforcement action, commencing with the filing of a Preliminary Notice of Violation. The Hearing Clerk also would maintain separate dockets for the interpretations issued pursuant to subpart D and the exemptions issued pursuant to subpart E. The Hearing Clerk would operate a public reading room where documents in a docket could be examined and copied.

11. Information Requirements

Proposed § 820.11 sets forth the obligations of those persons who provide information to DOE or maintain information for inspection by DOE. All information would have to be provided and maintained in a complete and accurate manner that would permit DOE to carry out its responsibilities. Moreover, the concealment or destruction of any information concerning a violation of a DOE Nuclear Safety Requirement, the Atomic Energy Act or any other statute relating to a DOE nuclear activity would be prohibited. Concealment would include the act of knowingly and intentionally not informing DOE of significant information concerning a violation.

12. Classified, Confidential, or Controlled Information

Proposed § 820.12 makes clear DOE's authority to protect classified, confidential, or controlled material. This authority would be exercised in a manner that minimized interference with the operation of the proposed procedures. Proposed section 820.12 also would reaffirm the obligations of

persons to protect classified confidential, or controlled information.

B. Subpart B—Enforcement Process

1. Scope

Proposed § 820.20 sets forth the purpose and scope of the enforcement process. The enforcement process would be used to investigate and determine whether a violation had occurred or was continuing to occur, to assure violations were rectified, to prevent and deter future violations, and to adjudicate the assessment of a civil penalty. The enforcement process could involve several different stages. The first stage normally would be an investigation, inquiry or inspection by the Director regarding a potential or alleged violation. The second stage would be an enforcement action by the Director in which he determined that a violation had occurred and proposed an appropriate remedy. The third stage, if requested by the respondent, would be adjudication by a Presiding Officer regarding the assessment of a civil penalty. The final stage would be the issuance of a final order by the Secretary.

Proposed paragraphs (b), (c), and (d) set forth limitations on the assessment of PAAA civil penalties in the enforcement process. The PAAA authorizes the assessment of civil penalties against DOE contractors, and the subcontractors and the suppliers thereto, who are indemnified by DOE for public liability for a nuclear incident pursuant to section 170d of the AEA. Proposed paragraph (b) would exempt current contractors at certain DOE laboratories from the assessment of civil penalties under the procedural rules. Proposed paragraph (c) would provide for the automatic remission of any civil penalties assessed against a nonprofit educational institution under the procedural rules. The PAAA mandates the exemption in proposed paragraph (b) and requires DOE to consider the automatic remission in proposed paragraph (c). Since all but one of the contractors statutorily exempted by the PAAA are nonprofit educational institutions, DOE believes fairness dictates similar treatment for all other nonprofit educational institutions. Proposed paragraph (d) would provide PAAA civil penalties could be assessed only for violations of DOE Nuclear Safety Requirements which were (1) regulations set forth in the Code of Federal Regulations, (2) Compliance Orders issued pursuant to proposed subpart D, and (3) programs, plans, or other provisions required to implement a CFR regulation or Compliance Order. Technical specifications and operational safety requirements would be identified explicitly as Nuclear Safety Requirements by proposed subpart G of part 820 and, thus, would be covered by proposed paragraph (d). Proposed paragraphs (b), (c) and (d) only relate to the assessment of civil penalties and do not limit criminal penalties or other actions under the proposed procedural rules.

2. Investigations

Proposed § 820.21 would grant the Director broad investigatory power, including authority to issue subpoenas and employ other evidentiary procedures under proposed § 820.09. DOE intends to investigate vigorously those situations that might have been or might be violations of DOE Nuclear Safety Requirements. The Director could initiate an investigation *sua sponte* or upon a request from any person. The Director could close an investigation at any time without foreclosing further investigation. In conducting an investigation, the Director would have to disclose its general nature and purpose to any person who was required to testify or otherwise provide evidentiary material. A person would have the right to provide the Director with documents, statements of facts, memorandum of law, or other explanatory material at any time during an investigation.

3. Informal Conference

Proposed § 820.22 would permit the Director, *sua sponte* or upon request of a person against whom enforcement action was being considered to convene an informal conference to discuss the preliminary conclusions of an investigation, inquiry or inspection concerning the existence of violations of DOE Nuclear Safety Requirements, their significance and cause, any mitigating or aggravating circumstances, and any other useful information. The Director could compel attendance at an informal conference. An informal conference would not normally be open to the public and there would be no transcript.

4. Consent Order

Proposed § 820.23 describes the settlement process. DOE encourages the settlement of enforcement proceedings at any time. To this end, the Director and a respondent or a person against whom enforcement action was being contemplated or had been initiated could meet at any time to discuss settlement. Such a meeting would not be open to the public and there would be no transcript. If a settlement was agreed upon, it would be set forth in a Consent Order signed by the Director and the respondent or the person under investigation and filed with the Hearing Clerk. The Consent Order would become a Final Order thirty days after it was filed unless the Secretary filed a rejection or a modified Consent Order. A modified Consent Order would become a Final Order if it was signed by the Director and the respondent or the person under investigation within fifteen days of its filing.

5. Preliminary Notice of Violation

Proposed § 820.24 would authorize the Director to file a Preliminary Notice of Violation when he had reason to believe a person had violated or was continuing to violate a DOE Nuclear Safety Requirement. A Preliminary Notice of Violation would have to (1) specify the Nuclear Safety Requirement to which the violation related, (2) state the basis for the belief a violation had occurred or was continuing to occur, (3) set forth any proposed remedy, including the amount of any civil penalty, and (4) explain the reasoning behind any proposed remedy.

A person would have to reply to a Preliminary Notice of Violation within fifteen days of its filing. The reply would have to be in writing, describe the circumstances surrounding the alleged violation to the best of the person's knowledge, indicate the extent to which the person had or had not violated DOE Nuclear Safety Requirements, discuss any actions that had been, were being, or would be taken to correct the violation to the extent it was admitted, and answer fully any questions set forth in the notice.

The respondent to a Preliminary Notice of Violation would have the option to avoid further proceedings by agreeing to comply with the proposed remedy and waiving any rights to challenge the Notice or the remedy. If the respondent elected this option, the Preliminary Notice of Violation, including the proposed remedy, would be deemed a Final Order.

6. Final Notice of Violation

Proposed § 820.25 would authorize the Director to file a Final Notice of Violation when he determined a person had violated, or was continuing to violate a DOE Nuclear Safety Requirement. A Final Notice of Violation would have to (1) specify the Nuclear Safety Requirement to which the violation related, (2) state the basis for the determination a violation had occurred, or was continuing to occur, (3) set forth any remedy, including the amount of any proposed civil penalty, (4) explain the reasoning behind any remedy, and (5), if the Final Notice of

Violation assessed a civil penalty, inform the respondent of his right (A) to waive further proceedings and pay the civil penalty within sixty days, (B) to request an on-the-record adjudication of the assessment, or (C) to seek judicial review of the assessment.

If a Final Notice of Violation did not assess a civil penalty, it would become a Final Order 15 days after its filing unless the Secretary filed an order which modified the Final Notice of Violation. If the Final Notice of Violation assessed a civil penalty and the respondent decided to waive further proceedings or seek judicial review of the assessment, it would become a Final Order upon the filing of the waiver or the notice of intent to seek judicial review. If the Final Notice of Violation assessed a civil penalty and the respondent requested an on-the-record adjudication, the filing of the request would initiate a PAAA adjudication to which the Director would become the party responsible for prosecuting the assessment of the civil penalty.

7. PAAA Adjudication

Proposed § 820.26 discusses the initiation of a PAAA Adjudication and the appointment by the Secretary of an administrative law judge to serve as the Presiding Officer. The filing of a request for an on-the-record adjudication would commence a PAAA adjudication and the compilation of the record on which the Secretary would decide whether to assess a civil penalty. The Final Notice of Violation would become the first document in the record and could serve as the basis for a decision even if no other documents were filed as part of the record. When a request for an on-the-record adjudication was filed with the Hearing Clerk, he would notify the Secretary who would appoint an Administrative Law Judge to serve as the Presiding Officer during a PAAA adjudication.

8. Answer

Proposed § 820.27 would require the respondent to file an Answer to a Final Notice of Violation if he elected an on-the-record adjudication. The Answer could (1) contest any material fact upon which the civil penalty was based, (2) contend the civil penalty was inappropriate, or (3) contend the respondent was entitled to a judgment as a matter of law. The Answer could admit, deny, or explain each of the factual allegations in the Notice. If the respondent had no knowledge of a particular allegation, he would have to so state and the allegation would be deemed denied. If the respondent failed to respond to a particular allegation, it would be deemed admitted. The Answer also would have to state (1) any defenses the respondent intended to assert, and (2) any facts or issues the respondent intended to contest. The Answer and the request for an on-the-record adjudication could be combined in one document.

9. Prehearing Actions

Proposed § 820.28 discusses the steps in a PAAA adjudication after the filing of an Answer. When an Answer was filed, the Hearing Clerk would be required to forward to the Presiding Officer the Final Notice of Violation, the Answer, and any other documents already filed in the enforcement proceeding. As soon as practicable thereafter, the Presiding Officer would notify the parties when and where any prehearing conference or other prehearing measure would take place. In most proceedings, the prehearing conference would be the only formal prehearing measure. The Presiding Officer could direct the parties to attend the prehearing conference and to consider, in his discretion (1) the settlement of the proceeding, (2) the simplification of issues, (3) the stipulation of facts not in dispute, (4) the necessity or desirability of amendments to pleadings, (5) the exchange of exhibits, (6) the limitation of the number of witnesses, (7) the time and place for the hearing, and (8) any other measures to expedite the adjudication. No later than five days before the prehearing conference, each party would have to provide the Presiding Officer and the other parties (1) the names of the witnesses the party intended to call, (2) a brief narrative of their expected testimony, and (3) copies of all documents and exhibits the party intended to introduce into evidence. No witness, testimony, or evidence not identified prior to the prehearing conference could be admissible in the hearing unless the Presiding Officer found there existed a good reason why the required identification was not provided prior to the prehearing and the admission of the witness, testimony, or evidence was necessary for a fair hearing. No discovery measures other than the exchange of witnesses, testimony, and evidence prior to the prehearing would be permitted unless the Presiding Officer ordered additional discovery measures. The party requesting the additional discovery measure would have the burden of demonstrating the need and usefulness of the discovery measure. In the event the Presiding Officer decided a prehearing conference was unnecessary or impractical, he could require a telephonic conference or other measure to accomplish the objectives of the prehearing conference.

10. Hearing

Proposed § 820.29 discusses the conduct of a hearing. In general, the Federal Rules of Evidence would govern conduct during a hearing. The Presiding Officer would have the discretion, however, to modify these Rules to facilitate the hearing. Proposed § 820.29 would state the general policy of admitting all evidence that was not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Within this general policy, the Presiding Officer could permit the introduction and consideration of evidence that might be barred by certain evidentiary rules, for example the "Hearsay Rule", or could act to limit the scope and length of evidence and to protect confidential, classified, or controlled information.

Unlike the Federal Rules of Evidence, proposed § 820.29 would prohibit direct oral testimony. Except as permitted by the Presiding Officer, all direct testimony would have to be set forth in a verified statement which must be received by the Presiding Officer and other parties no less than ten days prior to its presentation at the hearing. The witness who prepared the direct testimony would have to be available at the hearing for oral cross-examination. The use of written direct testimony is intended to expedite the hearing and to promote a full disclosure of the facts.

Proposed § 820.29 also discusses burden of proof. The Director would have the burden of establishing a prima facie case that a violation had occurred or was continuing to occur and that the remedy was appropriate. Thereafter, the respondent would have the burden of establishing any defense. The Presiding Officer would decide each matter in dispute upon a preponderance of the evidence.

11. Post-hearing Filings

Proposed § 820.30 would provide for filings after the close of a hearing. Except where the Presiding Officer had established a different schedule, within fifteen days of the filing of the hearing transcript, parties could file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. Parties could file reply briefs within thirty days of the filing of the hearing transcript. All filings would have to contain adequate references to the record and authorities relied upon.

12. Initial Decision

Proposed § 820.31 would provide for the Presiding Officer to file an Initial Decision as soon as practicable after the period for filing reply briefs. The Initial Decision would contain findings of fact, conclusions regarding all material issues of law or discretion, any remedy, and a proposed order. The Initial Decision would discuss the basis for any civil penalty and the extent to which it considered the criteria set forth in the General Statement of Enforcement Policy (Proposed appendix to part 820) in determining the amount of any civil penalty.

A party could file comments on an Initial Decision within fifteen days of its filing. The comments should indicate clearly and specifically what part, if any, of the Initial Decision should be modified and the reason for the modification. The filing of comments would constitute a request to the Secretary to reconsider the Initial Decision before it became a Final Order. This would be the only administrative appeal of the Presiding Officer's decision.

The filing of an Initial Decision would complete the PAAA adjudication and the role of the Presiding Officer unless the Secretary remanded all or part of the matter for further adjudication. After the filing of an Initial Decision, the Secretary would become the DOE Official in charge of the enforcement proceeding while he considered the record.

13. Final Order

Proposed § 820.32 sets forth the process by which an Initial Decision would become a Final Order. An Initial Decision would be deemed to be filed as a Final Order thirty days after the filing of the Initial Decision, unless the Secretary filed a Final Order that modified the Initial Decision or filed a Notice of Review. If the Secretary filed a Notice of Review, he would file a Final Order as soon as practicable. Prior to the filing of a Final Order, the Secretary could order additional procedures, including the submission of briefs, reply briefs, or any other document or information, or he could remand the matter for further proceedings.

14. Default Order

Proposed § 820.33 would provide for the filing of a Default Order, which would constitute an Initial Decision that could become a Final Order pursuant to proposed § 820.32. A party would be in default if it failed to comply with a provision of the proposed rules or an order of the Presiding Officer. Upon motion by another party or *sua sponte*, the Presiding Officer could file a Default Order against the party in default. When a Presiding Officer acted *sua sponte*, he would have to file a Notice of Intent to file a Default Order. The party in default would have ten days to answer the motion or the Notice of Intent. After the ten day period, the Presiding Officer could file a Default Order, which would constitute an Initial Decision that could become a Final Order pursuant to the provision of proposed § 820.32. A Default Order against the Director would result in the dismissal of the enforcement proceeding with prejudice. A Default Order against a respondent would constitute, for purposes of the pending proceeding only, a finding of all facts in the Final Notice of Violation.

15. Accelerated Decision

Proposed § 820.34 would permit the Presiding Officer, upon motion by a party or *sua sponte*, to file an Accelerated Decision in favor of the Director or the respondent at any time during a PAAA adjudication. The Presiding Officer could file an Accelerated Decision only if he determined that no genuine issue of material fact existed and a party was entitled to judgment as a matter of law, as to all or part of the issues being adjudicated. If an Accelerated Decision related to all the issues and claims in the proceeding, it would constitute an Initial Decision that could become a Final Order in thirty days pursuant to the provisions of proposed § 820.32. If an Accelerated Decision related to less than all issues or claims in the proceeding, the enforcement proceeding would continue with respect to the other issues and claims.

16. Ex Parte Communications

Proposed § 820.35 would prohibit any *ex parte* communications during a PAAA adjudication under the proposed rules. In the event this prohibition was violated, all parties would have to be advised of the *ex parte* communication and given an opportunity to comment. The proposed section makes clear this prohibition is not intended to prevent the Director from communicating with other DOE employees prior to the commencement of a PAAA adjudication. Thus, the Secretary could oversee the investigation phase of an enforcement proceeding, including the decision to issue a Final Notice of Violation. Thereafter, the Director could not communicate with the Secretary, but would be required to exercise his delegated authority in accordance with the policies of the Secretary.

17. Filing and Service of Documents

Proposed § 820.36 discusses the requirements concerning the filing and service of documents in an enforcement action. Commencing with the Preliminary Notice of Violation, the original and three copies of any notice, ruling, order, motion, comment, answer, communication, or other document which relates to an enforcement action would have to be filed with the Hearing Clerk. The only specific format requirement for documents in an enforcement action would be (1) a caption on the first page which identified the respondent and the Docket Number and (2) the signature of the respondent or his attorney on the original. In addition, the initial document filed by a respondent would contain his name, address, and telephone number. Any change in this information would have to be communicated promptly to the Hearing Clerk and the other participants in the proceeding. No document would be considered part of the record of a PAAA adjudication unless it was filed with the Hearing Clerk.

18. Parties

Proposed § 820.37 would make the Director and the respondent the only mandatory parties to a PAAA adjudication. The Presiding Officer, however, would have the discretion to permit interventions by persons who might be liable if a civil penalty were assessed. Any other person could file a motion to participate in the adjudication as *amicus curiae*.

19. Consolidation and Severance

Proposed § 820.38 would provide the Presiding Officer with the authority to order the consolidation of two or more PAAA adjudications under the proposed rules. Consolidation would be appropriate if (1) there existed common parties or common questions of law or fact, (2) consolidation would expedite or simplify the adjudication and (3) the right of the parties would not be affected adversely. The Presiding Officer also would have the authority to sever a PAAA adjudication with respect to any or all parties or issues.

20. Motions

Proposed § 820.38 discusses motions to the Presiding Officer in a PAAA adjudication under the proposed rules. In general, motions should (1) be filed with the Hearing Clerk (2) be served on all other participants, (3) state the relief sought and the reasons therefor, and (4) be accompanied by any affidavit, certificate, evidence, or legal

memorandum that supports the motion. Another party would have to respond to a motion within ten days after its filing. This response should be accompanied by any affidavit, certificate, evidence or legal memorandum that supports the party's position. The Presiding Officer would rule on a motion as soon as practicable after the time period for responses has expired. The ruling of the Presiding Officer would be final and not subject to appeal. In addition to written motions, the Presiding Officer could permit an oral motion during a hearing or conference and could rule on the oral motion after permitting the other parties an opportunity to state their views.

C. Subpart C—Compliance Orders

1. Scope

Proposed § 820.40 discusses the purpose and scope of Compliance Orders. Section 161 of the Atomic Energy Act grants the Secretary broad authority to order those actions he deems necessary to protect the public, facility workers and the environment from any injury because of activity under that Act. Proposed subpart C is intended to make clear that no provision of proposed part 820 would limit the Secretary's power under the Atomic Energy Act or any other statute to order immediately any action or remedy he deems necessary. Moreover, Compliance Orders would not be subject to the DOE Acquisition Regulations or required any authorization by a contracting officer.

2. Compliance Order

Proposed § 820.41 sets forth the authority of the Secretary to issue a Compliance Order to any person in connection with any DOE nuclear activity. The Compliance Order would state the action or remedy which the Secretary deemed necessary and the reasons for the action or remedy.

3. Final Order

Proposed § 820.42 would provide that a Compliance Order would be a Final Order which constituted a DOE Nuclear Safety Requirement. If a person did not comply with a Compliance Order, a Preliminary Notice of Violation could be filed or an injunction could be requested under the Atomic Energy Act.

4. Appeal

Proposed § 820.43 would grant the recipient of a Compliance Order the right to request the Secretary to rescind or modify the Compliance Order within 15 days of its issuance A Compliance Order would be effective immediately upon issuance and the filing of a request under this section would not stay the effectiveness of such an Order. The Secretary, however, could issue a Compliance Order that provided for an effective date after the issuance date and for a longer period to appeal the terms of the Order.

D. Subpart D—Interpretations

1. Scope

Proposed § 820.50 discusses the purpose and scope of interpretations. Interpretations would be the only pronouncements by DOE concerning the meaning and legal effect of the Atomic Energy Act, any other statute relating to a DOE nuclear activity, or a DOE Nuclear Safety Requirement on which a person could rely. Any written or oral response by a DOE emp1oyee to any written or oral question involving an interpretation of a statute or a requirement which was not issued pursuant to this subpart would not be binding on DOE and would provide no basis for action inconsistent with a statutory provision or a requirement. This subpart is not intended to have any effect on any official pronouncement by another Federal agency concerning a specific statutory or regulatory provision for which that agency is responsible.

2. General Counsel

Proposed § 820.51 would designate the General Counsel as the DOE Official responsible for issuing interpretations. In general, interpretations would relate to an actual situation and could be relied upon only by the person to whom the interpretation was specifically addressed. The General Counsel would have the discretion, however, to issue rulings that would have general applicability and relate to a general factual pattern.

3. Procedures

Proposed § 820.52 would grant the General Counsel the discretionary authority to employ whatever procedures he deemed appropriate to evaluate the need for an interpretation and then to formulate the interpretation. For example, the General Counsel might issue an SRO to obtain more facts on a situation for which an interpretation was requested or he might request written comments on a proposed ruling. The General Counsel would have to file an interpretation with the Hearing Clerk.

E. Subpart E—Exemptions

1. Purpose and Scope

Proposed § 820.60 discusses the granting of exemption relief. In general, DOE Nuclear Safety Requirements should contain sufficient flexibility to accommodate differences at individual DOE nuclear facilities, while still protecting the public health and safety, the environment and facility workers. DOE Nuclear Safety Requirements, however, might not anticipate every situation. Accordingly, situations could arise where compliance with a DOE Nuclear Safety Requirement would be inappropriate, impractical or impossible. Exemption relief in such situations might be appropriate if the relief would not be contrary to the intent of the DOE Nuclear Safety Requirement and would not endanger the environment or the health and safety of the public or facility workers.

Several sections of proposed parts 830, 834 and 835 would provide for programs, plans or other provisions to implement various regulatory requirements. These programs, plans and other provisions are intended to assist the achievement of these regulatory requirements by setting forth in detail the actions a person will take to comply with a requirement. As such, they might incorporate the suggested actions in the safety guide that related to a requirement or any other appropriate implementing action. They, however, are not intended and cannot be used to evade a regulatory requirement. Neither explicit language nor the lack of specificity in a program, plan or other provision can create an exemption to a regulatory requirement or relieve a person from the obligation to take necessary and appropriate actions to implement a requirement. Proposed subpart E is intended to be the sole means by which exemption relief would be granted.

2. Secretarial Officer

Proposed § 820.61 would place responsibility for granting exemption relief in the Secretarial Officer who had line authority for the activity to which the exception relates. The Secretarial Officer responsible for environmental matters would grant exemption relief from the requirements in proposed parts 834 and 835 concerning the radiological protection of the public, facility workers, and the environment.

DOE intends to maintain strong central control of its nuclear activities and to eliminate inconsistent and conflicting regulatory regimes at different DOE nuclear facilities. Centralized responsibility for granting exemption relief is an essential component of DOE's goal of establishing a uniform regulatory framework for all its facilities. Persons at a facility should not decide what regulations will apply to that facility. Accordingly, the

authority to grant exemptions could not be delegated.

3. Criteria

Proposed § 820.62 discusses the criteria DOE will follow in determining whether exemption relief is appropriate. Relief could be granted only if relief was consistent with the purposes of the Atomic Energy Act and DOE Nuclear Safety Requirements, did not endanger the public health and safety, the environment, or facility workers, was consistent with the safe and efficient operation of a DOE nuclear facility, and was necessary because of special circumstances not contemplated when the DOE Nuclear Safety Requirement in question was promulgated. Examples of special circumstances would include situations where (1) application of the requirement would conflict with another DOE Nuclear Safety Requirement, (2) application of the requirement would not serve the underlying purposes of the requirement, or (3) exemption from the requirement would result in benefit to the public health and safety and the environment that compensated for any detriment that might result from the grant of the exemption relief.

4. Procedures

Proposed § 820.63 would permit the Secretarial Officer to utilize whatever procedures he found appropriate for determining whether to grant exemption relief Proposed § 820.63 also would require the DOE Official to set forth in writing the reasons for granting or denying the exemption, and, if the exemption was granted, the terms of the exemption and the basis for the determination that the criteria in proposed § 820.62 had been satisfied. The Secretarial Officer would have to file his exemption decision with the Hearing Clerk.

F. Subpart F—Criminal Penalties

1 Scope

Proposed § 820.70 indicates the scope and purpose of proposed subpart F would be the establishment of procedures for dealing with criminal violations of the Atomic Energy Act and DOE Nuclear Safety Requirements.

2. Standard

Proposed § 820.71 would establish the standard for determining possible criminal violations to be whether a person had, by act or omission, violated, caused to be violated, attempted to violate, or conspired to violate any section of the Atomic Energy Act or a DOE Nuclear Safety Requirement. This proposed standard is intended to be sufficiently broad to cover all potential criminal violations of the Atomic Energy Act.

3. Referral to the Attorney General

Proposed § 820.72 would provide for referring any potential criminal violation to the Attorney General for investigation or prosecution.

G. Subpart G—Enforcement of Technical Specifications and Operational Safety Requirements

1. Scope

Proposed § 821.81 makes clear that existing technical specifications and operational safety requirements are DOE Nuclear Safety Requirements.

2. General Rule

Proposed § 821.8 makes clear that a person must comply with technical specifications and operational safety requirements and that non-compliance could result in the assessment of a civil penalty under subpart B. Enforcement of technical specifications and operational safety requirements is intended to be a transitional measure for the period until the rules in part 830, especially those on technical safety requirements, become fully effective. DOE does not intend to assess civil penalties for violations of existing technical specifications or operational safety requirements that do not relate to nuclear safety.

IV. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a "major rule" for purposes of the Executive Order because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

Pursuant to section 3(c) of E.O 12291, these rules were submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order

B. Review Under the Regulatory Flexibility Act

These proposed rules were reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements are not substantially different from existing reporting requirements contained in DOE contracts with DOE prime contractors covered by these rules. DOE will submit any new information collection requests concerning these proposed rules to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR part 1320.

D. Review Under the National Environmental Policy Act

The DOE has reviewed the promulgation of these rules with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508). The proposed rulemaking specifies procedures and standards for DOE enforcement actions under the PAAA. As noted in the CEQ regulations, major Federal actions "do not include bringing judicial or administrative civil or criminal enforcement actions" (40 CFR 1508.18(a)). Therefore, DOE has concluded that the proposed rulemaking does not represent a major Federal action with significant effects on the human environment within the meaning of NEPA and that no further review under NEPA is required.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in

all decisions involved in promulgation and implementing a policy action.

Today's proposed rules, when finalized, will not have a substantial direct effect on the institutional interests or traditional functions of States.

V. Public Comments Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Twenty copies of written comments should be submitted to the address indicated in the "**ADDRESSES**" section of this notice. All comments received will be available for public inspection in the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Written comments received by February 3, 1992 will be assessed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information, and, to treat it in accordance with its determination. See 10 CFR 1004.11.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, DOE contractors, or DOE. DOE is particularly interested in comments that discuss whether or not DOE may be subjecting its contractors to additional costs that are not contemplated by existing contractual relations or the PAAA. Comments concerning this subject should address the specific nature and scope of the additional costs to which contractors would be subjected and explain why these concerns are not already addressed in the current contractual relationship or PAAA.

B. Public Hearing

Requests to speak at the hearing must be submitted to the address and by the time indicated in the "**ADDRESSES**" section of this notice. Requests for oral presentations should contain a telephone number where the requester may be contacted prior to the hearing. Speakers are requested to submit twenty copies of their statement to DOE at the hearing.

DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes. The hearing begins at 9 a.m.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made available to the public. The entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Reading Room, 1E–190, 1000 Independence Ave. SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts may be purchased from the hearing transcriber/reporter.

List of Subjects in 10 CFR Part 820

Government contracts, DOE contracts, nuclear safety, civil penalty, criminal penalty.

For the reasons set out in this preamble, chapter III of title 10 of the Code of Federal Regulations is proposed to be amended by adding a new part 820 as set forth below.

Issued in Washington, DC on November 20, 1991.

John C. Tuck,

Under Secretary.

A new part 820 is added to read as follows:

PART 820—PROCEDURAL RULES

Subpart A—General

Sec.

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820.2 Definitions.
820.3 Separation of functions.
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820.5 Service.
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820.7 Questions of policy or law.
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Subpart B—Enforcement Process

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820.21 Investigations and inspections.
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820.35 *Ex Parte* discussions.
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820.70 Scope.
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820.81 General rule.

Appendix to Part 820—General Statement of Enforcement Policy

Authority: 42 U.S.C. 2201; 7191.

Subpart A—General

§ 820.1 Purpose and scope.

(a) *Scope.* This part sets forth the procedures to govern the conduct of persons involved in DOE nuclear activities and, in particular, to achieve compliance with the DOE Nuclear Safety Requirements by all persons subject to those requirements.

(b) *Questions not addressed by these rules.* Questions that are not addressed in this part shall be resolved at the discretion of the DOE Official.

§ 820.2 Definitions.

(a) The following definitions apply to this part:

Act means the Atomic Energy Act of 1954, as amended.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Consent Agreement means any written document, signed by the Director and a person, containing stipulations or conclusions of fact or law and a remedy acceptable to both the Director and the person.

Department means the United States Department of Energy or any predecessor agency.

Director means the Director of the Office of Nuclear Safety, or his designee, except that with regard to activities and facilities covered under E.O 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, the Director shall mean the Deputy Assistant Secretary for Naval Reactors or his designee.

DOE means the United States Department of Energy or any predecessor agency.

DOE Nuclear Safety Requirements means the rules, regulations, or orders relating to nuclear safety adopted by DOE (or by another Agency if DOE specifically identifies the rule, regulation, or order) to govern the conduct of persons in connection with any DOE nuclear activity and includes any programs, plans, or other provisions intended to implement these rules, regulations, orders, a Nuclear Statute or the Act, including technical specifications and operational safety requirements for DOE nuclear facilities.

DOE Official means the person, or his designee, in charge of making a decision under this part.

Filing means, except as otherwise specifically indicated, the completion of providing a document to the Office of the Hearing Clerk and serving the document on the person to whom the document is addressed.

Final Notice of Violation means a document filed by the Director in which the Director determines the respondent has violated or is continuing to violate a nuclear safety requirement and includes:

(1) A statement specifying the DOE Nuclear Safety Requirement to which the violation relates;

(2) A concise statement of the basis for the determination;

(3) Any remedy, including the amount of any civil penalty;

(4) A statement explaining the reasoning behind any remedy; and

(5) If the Notice assesses a civil penalty, notice of respondent's right:

(i) To waive further proceedings and pay the civil penalty;

(ii) To request an on-the-record adjudication of the assessment of the civil penalty; or

(iii) To seek judicial review of the assessment of the civil penalty.

Final Order means an order of the Secretary that represents final agency action and, where appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE or his designee

Hearing means an on-the-record adjudication open to the public and conducted under the procedures set forth in this part.

Hearing Clerk means the Office with which documents for an enforcement action must be filed and which is responsible for maintaining a record and a public docket.

Interpretation means a statement by the General Counsel concerning the meaning or effect of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

Initial Decision means the decision filed by the Presiding Officer based upon the record of the PAAA adjudication out of which it arises.

Nuclear Statute means any statute or provision of a statute that relates to a DOE nuclear activity and for which DOE is responsible.

Operational Safety Requirement means those provisions that define the conditions, safe boundaries, and bases thereof, and the management or administrative controls required to ensure the safe operation of a nonreactor nuclear facility.

PAAA adjudication means the portion of the enforcement process that commences when a respondent requests an on-the-record adjudication of the assessment of a civil penalty and terminates when a Presiding Officer files an initial decision.

Party means the Director and the respondent in a PAAA adjudication under this part.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department or the United States Nuclear Regulatory Commission.

Preliminary Notice of Violation means a document filed by the Director in which the Director sets forth his preliminary conclusions that the respondent has violated or is continuing to violate a DOE Nuclear Safety Requirement and includes:

(1) A statement specifying the DOE Nuclear Safety Requirement to which the violation relates;

(2) A concise statement of the basis for alleging the violation,

(3) Any proposed remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy

Presiding Officer means the Administrative Law Judge designated to be in charge of a PAAA adjudication who shall conduct a fair and impartial hearing, assure that the facts are fully elicited, adjudicate all issues, avoid delay, and shall have authority to:

(1) Conduct an adjudicatory hearing under this part;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Exercise the authority set forth in section 820.13;

(4) Admit or exclude evidence;

(5) Hear and decide questions of fact, law, or discretion, except for the validity of regulations and interpretations issued by DOE;

(6) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(7) Draw adverse inferences against a party that fails to comply with his orders;

(8) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

Remedy means any action necessary or appropriate to rectify, prevent, or penalize a violation of the Act , a Nuclear Statute, or a DOE Nuclear Safety Requirements, including the assessment of civil penalties, the requirement of specific actions, or the modification, suspension or recision of a contract.

Respondent means any person to whom the Director addresses a Preliminary Notice of Violation.

Secretarial Officer means the Assistant Secretary or Office Director who is primarily responsible for the conduct of an activity under the Act.

Secretary means the Secretary of Energy or his designee.

Technical Specification means any provision that defines the conditions, safe boundaries, and bases thereof, and the management or administrative controls required to ensure the safe operation of a nuclear reactor facility.

(b) Terms defined in the Act and not defined in these rules are used consistent with the meanings given in the Act.

(c) As used in this part, words in the singular also include the plural and words in the masculine gender also

include the feminine and vice versa, as the case may require.

§ 820.3 Separation of functions.

(a) *Separation of functions.* After a respondent requests an on-the-record adjudication of an assessment of a civil penalty, no person shall participate in a decision-making function in an enforcement proceeding if he has been, is or will be responsible for an investigative or prosecutorial function related to that proceeding or if he reports to the person responsible for the investigative or prosecutorial function.

(b) *Director.* The Director shall be responsible for the investigation and prosecution of violations of the DOE Nuclear Safety Requirements. After the commencement of an adjudication, the Director shall not discuss *ex parte* the merits of the proceeding with a DOE Official or any person likely to advise the DOE Official in the decision of the proceeding.

(c) *Presiding Officer.* A Presiding Officer shall perform no duties inconsistent with his responsibilities as a Presiding Officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of an investigative or prosecutorial function. The Presiding Officer may not consult any person other than a member of his staff or a special assistant on any fact at issue unless on notice and opportunity for all parties to participate, except as required for the disposition of *ex parte* matters as authorized by law.

§ 820.4 Conflict of interest.

A DOE Official may not perform functions provided for in this Part regarding any matter in which he has a financial interest or has any relationship that would make it inappropriate for him to act. A DOE Official shall withdraw at any time from any action in which he deems himself disqualified or unable to act for any reason. Any interested person may at any time request the General Counsel to disqualify a DOE Official or request that the General Counsel disqualify himself. In the case of a PAAA Adjudication, a motion to disqualify shall be made to the Presiding Officer. The request shall be supported by affidavits setting forth the grounds for disqualification of the DOE Official. A decision shall be made as soon as practicable and information may be requested from any person concerning the matter. If a DOE Official is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in this section shall replace him

§ 820.5 Service.

(a) *General rule.* Any document filed with the Hearing Clerk must be served on the addressee of the document and shall not be considered filed until service is complete and unless accompanied by proof of service; provided that the filing with the Hearing Clerk of any document addressed to the DOE Official shall be considered service on the DOE Official.

(b) *Service in a PAAA adjudication.* Any document filed in a PAAA adjudication must be served on all other participants in the adjudication.

(c) *Who may be served.* Any paper required to be served upon a person shall be served upon him or upon the representative designated by him or by law to receive service of papers. When an attorney has entered an appearance on behalf of a person, service must be made upon the attorney of record.

(d) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail or as otherwise authorized or required by the DOE Official. The DOE Official may require service by express mail.

(e) *When service is complete.* Service upon a person is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By mail, on deposit in the United States mail, properly stamped and addressed; or

(3) By any other means authorized or required by the DOE Official.

(f) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgement of the person served or his counsel,

(2) The certificate of counsel if he has made the service;

(3) The affidavit of the person making the service; or

(4) Any other means authorized or required by the DOE Official.

(g) *Deemed service.* If a document is deemed filed under this part, then the service requirements shall be deemed satisfied when the document is deemed filed.

§ 820.6 Computation and extension of time.

(a) *Computation.* In computing any period of time set forth in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* A DOE Official may grant an extension of any time period set forth in this part.

(c) *Service by mail.* Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document. Where a pleading or document is served by express mail, only two (2) days shall be added.

§ 820.7 Questions of policy or law.

(a) *Certification.* There shall be no interlocutory appeal from any ruling order, or action decision of a DOE Official except as permitted by this section. A Presiding Officer in a PAAA Adjudication may certify, in his discretion, a question to the Secretary, when the order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion, and either an immediate decision will materially advance the ultimate termination of the proceeding, or subsequent review will be inadequate or ineffective.

(b) *Decision.* The certified question shall be decided as soon as practicable. If the Secretary determines that the question was improvidently certified, or if he takes no action within thirty days of the certification, the certification is dismissed. The Secretary may decide the question on the basis of the submission made by the Presiding Officer or may request further information from any person.

§ 820.8 Evidentiary matters.

(a) *General.* A DOE Official may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section, subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in

computerized or other automated systems in possession of the subpoenaed person.

(b) *Special Report Orders.* A DOE Official may issue a Special Report Order (SRO) requiring any person involved in a DOE nuclear activity or otherwise subject to the jurisdiction of DOE to file a special report providing information relating to a DOE Nuclear Safety Requirement, the Act, or a Nuclear Statute, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required by this part.

(c) *Extension of time.* The DOE Official who issues a subpoena or SRO pursuant to this section, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(d) *Reconsideration.* Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may request reconsideration of the subpoena or SRO with the DOE Official who issued the document. If the subpoena or SRO is not modified or rescinded within 10 days of the date of the filing of the request, the subpoena or SRO shall be effective as issued and the person upon whom the document was served shall comply with the subpoena or SRO within 20 days of the date of the filing. There is no administrative appeal of a subpoena or SRO.

(e) *Service.* A subpoena or SRO shall be served in the manner set forth in § 820.5, except that service by mail must be made by registered or certified mail.

(f) *Fees.* (1) A witness subpoenaed by a DOE Official shall be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(2) If a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage shall be paid by the DOE if the person shows:

(i) The presence of the subpoenaed witness will materially advance the proceeding; and

(ii) the person who requested that the subpoena be issued would suffer a serious hardship if required to pay the witness fees and mileage. The DOE Official issuing the subpoena shall make the determination required by this subsection.

(g) *Enforcement.* If any person upon whom a subpoena or SRO is served pursuant to this section, refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the United States District Court to enforce the subpoena or SRO.

(h) *Certification.* (1) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that a diligent search has been made for each document responsive to the subpoena, and to the best of his knowledge, information, and belief all such documents responsive to the subpoena are being produced unless withheld on the grounds of privilege pursuant to paragraph (i) of this section.

(2) Any information furnished in response to an SRO shall be accompanied by the sworn certification under penalty of perjury of the person to whom it was directed or his authorized agent who actually provides the information that to the best of his knowledge, information and belief a diligent effort has been made to provide all information required by the SRO, and all information furnished is true, complete, and correct unless withheld on grounds of privilege pursuant to paragraph (i).

(3) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason for failing to comply with the subpoena or SRO.

(i) *Withheld information.* If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (h) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, a memorandum of law supporting the claim of privilege, and an identification of the person whose privilege is being asserted.

(j) *Testimony.* (1) If testimony is taken pursuant to a subpoena, the DOE Official shall determine whether the testimony shall be recorded and the means by which the testimony is recorded.

(2) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees. Upon proper identification, any witness or his attorney has the right to inspect the official transcript of the witness' own testimony.

(k) *Sequestration.* The DOE Official may sequester any person who furnishes documents or gives testimony. Unless permitted by the DOE Official, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(l) *Attorney.* (1) Any witness whose testimony is taken may be accompanied, represented and advised by his attorney; provided that, if the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(2) The DOE Official shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. The DOE Official may take actions as the circumstances may warrant in regard to any instances where any attorney refuses to comply with directions or provisions of this section.

§ 820.9 Special assistant.

A DOE Official may appoint a person to serve as a special assistant to assist the DOE Official in the conduct of any proceeding under this Part. Such appointment may occur at any appropriate time. A special assistant shall be subject to the disqualification provisions in § 820.5. A special assistant may perform those duties assigned by the DOE Official, including but not limited to, serving as technical interrogators, technical advisors and special master.

§ 820.10 Office of the hearing clerk.

(a) *Docket.* The Hearing Clerk shall maintain a docket for enforcement actions commencing with the filing of a Preliminary Notice of Violation, interpretations issued pursuant to subpart D of this part, exemptions issued pursuant to subpart E of this part and any other matters designated by the Secretary. A docket for an enforcement action shall contain all documents required to be filed in the proceeding.

(b) *Public inspection.* Subject to the provisions of law restricting the public disclosure of certain information, any person may, during Agency business hours, inspect and copy any document filed with the Hearing Clerk. The cost of duplicating documents shall be borne by the person seeking copies of such

documents. The DOE Official may waive this cost in appropriate cases.

(c) *Transcript.* Except as otherwise provided in this part, after the filing of a Preliminary Notice of Violation, all hearings, conferences, and other meetings in the enforcement process shall be transcribed verbatim. A copy of the transcript shall be filed with the Hearing Clerk promptly. The Hearing Clerk shall serve all participants with notice of the availability of the transcript and shall furnish the participants with a copy of the transcript upon payment of the cost of reproduction, unless a participant can show that the cost is unduly burdensome.

§ 820.11 Information requirements.

(a) Any information provided to DOE by any person or maintained by any person for inspection by DOE shall be complete and accurate in all material respects.

(b) No person involved in a DOE nuclear activity shall conceal or destroy any information concerning a violation of a DOE Nuclear Safety Requirement, a Nuclear Statute, or the Act.

§ 820.12 Classified, confidential, and controlled information.

(a) *General rule.* The DOE Official in charge of a proceeding under this part may utilize any procedures he deems appropriate to safeguard and prevent disclosure of classified, confidential, and controlled information, including Restricted Data and National Security Information, to unauthorized persons, with minimum impairment of rights and obligations under this part.

(b) *Obligation to protect restricted information.* Nothing in this Part shall relieve any person from safeguarding classified, confidential, and controlled information, including Restricted Data or National Security Information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

Subpart B—Enforcement Process

§ 820.20 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures for investigating the nature and extent of violations of the DOE Nuclear Safety Requirements, for determining, whether a violation has occurred, for imposing an appropriate remedy, and for adjudicating the assessment of a civil penalty.

(b) *Exemptions.* The following contractors, and subcontractors and suppliers thereto, are exempt from the assessment of civil penalties under this subpart with respect to the activities specified below:

(1) The University of Chicago for activities associated with Argonne National Laboratory;

(2) The University of California for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

(3) American Telephone and Telegraph Company and its subsidiaries for activities associated with Sandia National Laboratory;

(4) University Research Association, Inc. for activities associated with FERMI National Laboratory;

(5) Princeton University for activities associated with Princeton Plasma Physics Laboratory;

(6) The Associated Universities, Inc. for activities associated with the Brookhaven National Laboratory; and

(7) Battelle Memorial Institute for activities associated with Pacific Northwest Laboratory.

(c) *Nonprofit educational institutions.* Any educational institution that is considered nonprofit under the United States Internal Revenue Code shall receive automatic remission of any civil penalty assessed under this part.

(d) *Basis for civil penalties.* DOE may assess civil penalties on the basis of a violation of:

(1) Any DOE Nuclear Safety Requirement set forth in the Code of Federal Regulations;

(2) Any Compliance Order issued pursuant to Subpart D; or

(3) Any program, plan or other provision required to implement any requirement or order identified in paragraph (d)(1) or (d)(2).

§ 820.21 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with the Act and the DOE Nuclear Safety Requirements and take such action as he deems necessary and appropriate to the conduct of the investigation or inspection, including any action pursuant to § 820.8.

(b) Any person may request the Director to initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection shall set forth the subject matter or activity to be investigated or inspected as fully as possible and include supporting documentation and information. No particular forms or procedures are required.

(c) Any person who is requested to furnish documentary evidence or testimony in an investigation or during an inspection shall be informed, upon written request, of the general purpose of the investigation or inspection.

(d) Information or documents that are obtained during any investigation or inspection shall not be disclosed unless the Director directs or authorizes the public disclosure of the investigation the information or documents are a matter of public record or disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and 10 CFR part 1004. A request for confidential treatment of information for purposes of the Freedom of Information Act shall not prevent disclosure by the Director if disclosure is determined to be in the public interest and otherwise permitted or required by law.

(e) During the course of an investigation or inspection any person may submit at any time any document, statement of facts or memorandum of law for the purpose of explaining the person's position or furnish information which the person considers relevant to a matter or activity under investigation or inspection.

(f) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the investigation may be closed without prejudice to further investigation or inspection by the Director at any time that circumstances so warrant.

§ 820.22 Informal conference.

The Director may convene an informal conference to discuss any situation that might be a violation of the Act or a DOE Nuclear Safety Requirement, its significance and cause, any corrective taken or not taken by the person, any mitigating or aggravating circumstances, and any other useful information. The Director may compel a person to attend the conference. This conference will not normally be open to the public and there shall be no transcript.

§ 820.23 Consent order.

(a) *Settlement policy.* DOE encourages settlement of an enforcement proceeding at any time if the settlement is consistent with the objectives of the Act and the DOE Nuclear Safety Requirements. The Director and a person may confer at any time concerning settlement. These settlement conferences shall not be open to the public and there shall be no transcript.

(b) *Consent Order.* Notwithstanding any other provision of this part, DOE may at any time resolve an outstanding enforcement proceeding with a Consent

Order. A Consent Order must be signed by the Director and the person who is its subject, or a duly authorized representative, must indicate agreement to the terms contained therein and must be filed. A Consent Order need not constitute an admission by any person that the Act or a DOE Nuclear Safety Requirement has been violated, nor need it constitute a finding by the DOE that such person has violated the Act or a DOE Nuclear Safety Requirement. A Consent Order shall, however, set forth the relevant facts which form the basis for the Order and what remedy, if any, is imposed.

(c) *Effect On PAAA Adjudication.* If a Consent Order is signed after the commencement of a PAAA adjudication, the adjudication shall be stayed until the completion of the Secretarial Review Process. If the Consent Order becomes a Final Order, the adjudication shall be terminated or modified as specified in the Order.

(d) *Secretarial Review.* A Consent Order shall become a Final Order 30 days after it is filed unless the Secretary files a rejection of the Consent Order or a Modified Consent Order. A Modified Consent Order shall become a Final Order if the Director and the person who is its subject sign it within 15 days of its filing.

§ 820.24 Preliminary notice of violation.

(a) If the Director has reason to believe a person has violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Preliminary Notice of Violation.

(b) Within 15 days after the filing of a Preliminary Notice of Violation, the respondent shall file a reply.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a statement of all relevant facts pertaining to the situation that is the subject of the Notice. The reply shall state any facts, explanations and arguments which support a denial that a violation has occurred as alleged; demonstrate any extenuating circumstances or other reason why the proposed remedy should not be imposed or should be mitigated; and furnish full and complete answers to the questions set forth in the Notice. Copies of all relevant documents shall be submitted with the reply. The reply shall include a discussion of the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE.

(d) The respondent may terminate an enforcement action if the reply agrees to comply with the proposed remedy and waives any right to contest the Notice or the remedy. If a respondent elects this option, the Preliminary Notice of Violation shall be deemed a Final Order upon the filing of the reply.

§ 820.25 Final notice of violation.

(a) *General rule.* If, after reviewing the reply submitted by the respondent, the Director determines that a person violated or is continuing to violate a provision of the Act or a DOE Nuclear Safety Requirement, he may file a Final Notice of Violation.

(b) *Effect of Final Notice.* (1) If a Final Notice of Violation does not contain a civil penalty, it shall be deemed filed as a Final Order 15 days after the Final Notice is filed unless the Secretary files a Final Order which modifies the Final Notice.

(2) If a Final Notice of Violation contains a civil penalty, the respondent must file within 15 days after the filing of the Final Notice:

(i) A waiver of further proceedings;

(ii) A request for an on-the-record adjudication; or

(iii) A notice of intent to seek judicial review.

(c) *Effect of waiver.* If a respondent waives further proceedings, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent. The respondent must pay any civil penalty set forth in the Notice of Violation within 60 days of the filing of waiver unless the Director grants additional time.

(d) *Effect of request.* If a respondent files a request for an on-the-record adjudication, then a PAAA adjudication commences.

(e) *Effect of Notice of Intent.* If a respondent files a Notice of Intent, the Final Notice of Violation shall be deemed a Final Order enforceable against the respondent.

(f) *Amendment.* The Director may amend the Final Notice of Violation at any time before an action takes place pursuant to paragraph (b) of this section. An amendment shall add 15 days to the time periods under paragraph (b) of this section.

(g) *Withdrawal* The Director may withdraw the Final Notice of Violation, or any part thereof, at any time before an action under paragraph (b) of this section.

§ 820.26 PAAA adjudication.

If a respondent files a request for an on-the-record adjudication, a PAAA adjudication is initiated and the Hearing Clerk shall notify the Secretary who shall appoint an Administrative Law Judge to be the Presiding Officer.

§ 820.27 Answer.

(a) *General* If a respondent files a request for an on-the-record adjudication pursuant to § 820.24, he shall file a written answer to the Final Notice of Violation at the same time the request is filed.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Final Notice of Violation with regard to which respondent has any knowledge, information or belief. Where respondent has no knowledge, information or belief of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state the circumstance or argument that is alleged to constitute the grounds of defense and the facts that respondent intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the Final Notice of Violation constitutes an admission of the allegation.

(d) *Amendment of the answer.* The respondent may amend the answer to the Final Notice of Violation upon motion granted by the Presiding Officer

§ 820.28 Prehearing actions.

(a) *General.* The Presiding Officer shall establish a schedule for the adjudication and take such other actions as he determines appropriate to conduct the adjudication in a fair and expeditious manner.

(b) *Prehearing conference.* The Presiding Officer, at any time before a hearing begins, may direct the parties and their counsel, or other representatives, to appear at a conference before him to consider, as appropriate:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters that may expedite the disposition of the proceeding.

(c) Exchange of witness lists and documents. Unless otherwise ordered by the Presiding Officer, at least five (5) days before any prehearing conference, each party shall make available to all other parties, as appropriate the names of the expert and other witnesses he intends to call, together with a brief

narrative summary of their expected testimony, and copies of all documents and exhibits that each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence

(d) *Prehearing Conference Order* The Presiding Officer shall prepare an order incorporating any action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(e) *Alternative to prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte*, may direct the parties to make appropriate filings with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Except as provided by paragraph (c) of this section, further discovery under this section shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order to take further discovery shall make a motion therefor. Such a motion shall set forth:

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to the inference that the information to be discovered would be adverse to the party from whom the information was sought, or the issuance of a default order under § 820.38.

§ 820.29 Hearing.

(a) *General* Except as otherwise provided by this part or the Presiding Office, a hearing shall be conducted in accordance with the Federal Rules of Evidence. The Presiding Officer shall have the discretion to admit all evidence that is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, if he believes the evidence might facilitate the fair and expeditious resolution of the proceeding, but such evidence may be reasonably limited by the Presiding Officer in scope and length in order to permit prompt resolution of the proceeding. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information, and shall protect classified and unclassified controlled nuclear information, as well as any other information protected from public disclosure pursuant to law or regulation. The confidential, trade secret, or classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental initial decision to address questions of law, fact, or discretion that arise out of that portion of the evidence that is confidential, includes trade secrets, is classified, or is otherwise protected.

(b) *Subpoenas.* The attendance of witnesses or the production of documentary evidence may be required by subpoena.

(c) *Examination of witnesses.* There shall be no direct oral testimony by witnesses, except as permitted by the Presiding Officer. In lieu of oral testimony, the Presiding Officer shall admit into the record as evidence verified written statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall have delivered a copy of the statement to the Presiding Officer and the opposing counsel not less than 10 days prior to the date the witness is scheduled to testify. The witness presenting the statement shall swear or affirm that the statement is true and accurate to the best of his knowledge, information, and belief and shall be subject to appropriate oral cross-examination upon the contents thereof provided such cross-examination is not unduly repetitious.

(d) *Burden of presentation; Burden of persuasion.* The Director has the burden of going forward with and of proving that the violation occurred as set forth in the Notice of Violation and that the proposed civil penalty is appropriate. Following the establishment of a *prima facie* case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Notice of Violation. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 820.30 Post-hearing filings.

Within fifteen days after the filing of the transcript of the hearing, or within such longer time as may be fixed by the Presiding Officer, any party may file for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. Reply briefs may be filed within ten days of the filing of briefs. All filings shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

§ 820.31 Initial decision.

(a) *Initial decision.* The Presiding Officer shall file an Initial Decision as soon as practicable after the period for filing reply briefs under § 830.30 has expired. The Initial Decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, any remedy and a proposed Final Order. A party may file comments on an Initial Decision within fifteen days of its filing.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and that a civil penalty is appropriate, the Initial Decision shall set forth the dollar amount of the civil penalty. If the Presiding Officer decides to assess a penalty different in amount from the penalty assessed in the Final Notice of Violation, the Initial Decision shall set forth the specific reasons for the increase or decrease

§ 820.32 Final Order.

(a) *Effect of initial decision.* The Initial Decision shall be deemed filed as a Final Order thirty days after the filing of the Initial Decision unless the Secretary files a Final Order that modifies the Initial Decision or the Secretary files a Notice of Review.

(b) *Notice of Review.* If the Secretary files a Notice of Review, he shall file a Final Order as soon as practicable after completing his review. The Secretary may, at his discretion, order additional procedures, remand the matter, or modify the remedy, including an increase or decrease in the amount of the civil penalty from the amount recommended to be assessed in the Initial Decision.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the Final Order within thirty (30) days after the Final Order is filed unless otherwise agreed by the parties.

§ 820.33 Default order.

(a) *Default.* Upon motion by a party or his filing of a Notice of Intent to issue a Default Order, the Presiding Officer may find a party to be in default if the party fails to comply with the provisions of this part or an order of the Presiding Officer. The alleged defaulting party shall have ten days to answer the motion or the Notice of Intent. No finding of default shall be made against the respondent unless the Director presents sufficient evidence to the Presiding Officer to establish a *prima facie* case against the respondent. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the Final Notice of Violation and a waiver of respondent's rights to an on-the-record adjudication of such factual allegations. Default by the Director shall result in an order to dismiss the Final Notice of Violation with prejudice.

(b) *Effect of default order.* When the Presiding Officer finds a default has occurred, he shall file a Default Order against the defaulting party. This order shall constitute an Initial Decision.

(c) *Contents of a default order.* A Default Order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of fact, law or discretion, and the remedy.

§ 820.34 Accelerated decision.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte*, may at any time render an Accelerated Decision in favor of the Director or the respondent as to all or any part of the adjudication, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the adjudication. In addition, the Presiding Officer, upon motion of the respondent, may render at any time an Accelerated Decision to dismiss an action without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a *prima facie* case or other grounds that show no right to relief on the part of the Director.

(b) *Effect of Accelerated Decision.* (1) If an Accelerated Decision is rendered as to all the issues and claims in the adjudication, the decision constitutes an Initial Decision of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an Accelerated Decision is rendered on less than all issues or claims in the adjudication, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon file an interlocutory order specifying the facts that appear substantially uncontroverted, and the issues and claims upon which the adjudication will proceed.

§ 820.35 Ex parte Discussions.

At no time after a respondent has requested an on-the-record adjudication of the assessment of a civil penalty shall a DOE Official, or any person who is likely to advise a DOE Official in the decision on the case, discuss *ex parte* the merits of the proceeding with any interested person outside DOE, with any DOE staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to a DOE Official during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. Any oral communication shall be set forth in a written memorandum and served on all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

§ 820.36 Filing, Form, and Service of Documents.

(a) *Filing in an enforcement proceeding.* The original and three copies of any document in an enforcement proceeding shall be filed with the Hearing Clerk commencing with the filing of a Preliminary Notice of Violation.

(b) *Form of documents in an enforcement proceeding.* (1) Except as provided herein, or by order of the DOE Official, there are no specific requirements as to the form of documents filed in an Enforcement Proceeding.

(2) The first page of every document shall contain a caption identifying the respondent and the docket number.

(3) The original of any document (other than exhibits) shall be signed by the person filing it or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk and all participants to the proceeding. A person who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under this Part.

(5) The Hearing Clerk may refuse to file any document that does not comply with this section. Written notice of such refusal, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any document refused for filing.

§ 820.37 Participation in a PAAA adjudication.

(a) *Parties.* In a PAAA adjudication, the Director and the respondent shall be the only parties; provided that the Presiding Officer may permit a person to intervene as a party if the person demonstrates it could be liable in the event a civil penalty is assessed.

(b) *Appearances.* Any party to a PAAA adjudication may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(c) *Amicus Curiae.* Persons not parties to a PAAA adjudication who wish to file briefs may so move. The motion shall identify the interest of the person and shall state the reasons why the proposed amicus brief is desirable. If the

motion is granted, the Presiding Officer shall issue an order setting the time for filing such brief. An *amicus curiae* is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

§ 820.38 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or *sua sponte*, consolidate any or all matters at issue in two or more PAAA adjudications under this part where there exists common parties or common questions of fact or law, consolidation would expedite and simplify consideration of the issues, and consolidation would not adversely affect the rights of parties engaged in otherwise separate adjudications.

(b) *Severance.* The Presiding Officer may, by motion or *sua sponte*, for good cause shown order any PAAA adjudication severed with respect to any or all parties or issues.

§ 820.39 Motions.

(a) *General.* All motions in a PAAA adjudication except those made orally, shall be in writing, state the grounds therefore with particularity, set forth the relief or order sought, and be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon.

(b) *Answer to motions.* Except as otherwise specified by a particular provision of this part or by the Presiding Officer, a party shall have the right to file a written answer to the motion of another party within 10 days after the filing of such motion. The answer shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no answer is filed within the designated period, the party may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter or longer time for an answer, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer shall rule on a motion as soon as practicable after the filing of the answer. The decision of the Presiding Officer on any motion shall not be subject to administrative appeal.

Subpart C—Compliance Orders

§ 820.40 Purpose and scope.

This subpart provides for the issuance of Compliance Orders to prevent, rectify or penalize violations of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement and to require action consistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

§ 820.41 Compliance order.

The Secretary may issue to any person involved in a DOE nuclear activity a Compliance Order that:

(a) identifies a situation that violates, potentially violates, or otherwise is inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement;

(b) mandates a remedy or other action; and,

(c) states the reasons for the remedy or other action.

§ 820.42 Final Order.

A Compliance Order is a Final Order that constitutes a DOE Nuclear Safety Requirement that is effective immediately unless the Order specifies a different effective date.

§ 820.43 Appeal.

Within fifteen days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request shall not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

Subpart D—Interpretations

§ 820.50 Purpose and scope.

This Subpart provides for interpretations of the Act, Nuclear Statutes, and DOE Nuclear Safety Requirements. Any written or oral response to any written or oral question which is not provided pursuant to this Subpart does not constitute an interpretation and does not provide any basis for action inconsistent with the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirement.

§ 820.51 General Counsel.

The General Counsel shall be the DOE Official responsible for formulating and issuing any interpretation concerning the Act, a Nuclear Statute or a DOE Nuclear Safety Requirement.

§ 820.52 Procedures.

The General Counsel may utilize any procedure which he deems appropriate to comply with his responsibilities under this subpart. All interpretations must be filed with the Office of the Hearing Clerk which shall maintain a docket for interpretations issued pursuant to this subpart.

Subpart E—Exemption Relief

§ 820.60 Purpose and scope.

This Subpart provides for exemption relief from provisions of the DOE Nuclear Safety Requirements.

§ 820.61 Secretarial officer.

The Secretarial Officer who is primarily responsible for the activity to which a Nuclear Safety Requirement relates may grant an exemption from that requirement; provided that, the Secretarial Officer responsible for environmental matters shall exercise this authority with respect to the provisions of 10 CFR parts 834 and 835. This authority may not be delegated.

§ 820.62 Criteria.

The criteria for granting an exemption to a Nuclear Safety Requirement are determinations the exemption:

(a) Would be consistent with the purposes of the Act and the DOE Nuclear Safety Requirements;

(b) Would not endanger the public health and safety, the environment, or facility workers;

(c) Would be consistent with the safe and efficient operation of a DOE nuclear facility; and

(d) Involves special circumstances, including the following:

(1) Application of the requirement in the particular circumstances conflicts with other requirements; or

(2) Application of the requirement in the particular circumstances would not serve its underlying purpose or is not necessary to achieve its underlying purpose; or

(3) Compliance would result in a situation significantly different than that contemplated when the requirement was adopted, or that is significantly different from that encountered by others similarly situated; or

(4) The exemption would result in benefit to the public health and safety that compensates for any detriment that may result from the grant of the exemption; or

(5) There is present any other material circumstances not considered when the requirement was adopted for which it would be in the public interest to grant an exemption .

§ 820.63 Procedures.

The Secretarial Officer may utilize any procedures he deems appropriate to comply with his responsibilities under this Part; provided that any exemption decision must set forth in writing the reasons for granting or denying the exemption, and if granted, the basis for the determination that the criteria in

§ 820.72 have been met and the terms of the exemption. All exemption decisions must be filed with the Office of the Hearing Clerk which shall maintain a docket for exemption decisions issued pursuant to this subpart.

Subpart F—Criminal Penalties

§ 820.70 Scope.

This subpart provides for the identification of criminal violations of the Act or DOE Nuclear Safety Requirements and the referral of such violations to the Department of Justice.

§ 820.71 Standard.

If a person subject to the Act or the DOE Nuclear Safety Requirements has, by act or omission, violated, caused to be violated attempted to violate, or conspired to violate any section of the Act or any applicable Nuclear Safety Requirement, the person shall be subject to criminal sanctions under the Act.

§ 820.72 Referral to the Attorney General.

If there is reason to believe a criminal violation of the Act or the DOE Nuclear Safety Requirements has occurred, DOE may refer the matter to the Attorney General of the United States for investigation or prosecution.

Subpart G—Enforcement of Technical Specifications and Operational Safety Requirements

§ 820.80 Purpose and scope.

This Subpart sets forth the DOE Nuclear Safety Requirement that a person must comply with technical specifications and operational safety requirements.

§ 820.81 General rule.

(a) *Compliance.* A person must comply with any technical specification or operational safety requirement that relates to an activity under the Act in which the person is engaged.

(b) *Violation.* Non-compliance with paragraph (a) of this section shall be a violation of a DOE Nuclear Safety Requirement for which a remedy may be assessed pursuant to subpart B of this part.

Appendix to Part 820—General Statement of Enforcement Policy

I. Introduction

This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to enforce compliance with its nuclear safety rules, regulations and orders (hereafter collectively referred to as nuclear safety requirements) and, in particular, exercise the civil penalty authority provided to DOE in the Price-Anderson Amendments Act of 1988, 42 U.S.C. 2282a (PAAA). The policy set forth herein is applicable to violations of DOE nuclear safety requirements by DOE contractors who are indemnified under the Price-Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE nuclear entities). This policy statement is *not* a regulation and is intended only to provide general guidance to those persons subject to DOE's nuclear safety requirements as specified in the PAAA. It is not intended to establish a "cookbook" approach to the initiation and resolution of situations involving non-compliance with DOE nuclear safety requirements. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases.

Both the Department of Energy Organization Act, 42 U.S.C. 7101 *et seq*, and the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq*, require DOE to protect the public health and safety, as well as the safety of workers at DOE facilities, in conducting its nuclear activities, and grant DOE broad authority to achieve this goal. Consistent with this responsibility, DOE will take prompt and vigorous enforcement action when dealing with DOE nuclear entities which do not achieve the meticulous attention to detail and strict compliance with nuclear safety requirements which DOE expects. Each potential enforcement situation will require the exercise of discretion in determining its proper disposition after consideration of this policy. In no case, however, will nuclear entities which cannot achieve and maintain, in their conduct of operations, an adequate level of public and worker protection be permitted to continue their involvement in DOE's nuclear activities.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the radiological health and safety of the public and workers at DOE facilities by:

a. Ensuring compliance by DOE nuclear entities with applicable DOE nuclear safety requirements.

b. Providing positive incentives for a DOE nuclear entity's:

(1) Timely self-identification of nuclear safety deficiencies,

(2) Prompt and complete reporting of such deficiencies to DOE,

(3) Root cause analyses of nuclear safety deficiencies,

(4) Prompt correction of nuclear safety deficiencies in a manner which precludes recurrence, and

(4) Identification of modifications in practices or facilities that can improve public or worker radiological health and safety.

c. Deterring future violations of DOE requirements by a DOE nuclear entity.

d. Encouraging the continuous overall improvement of operations at DOE nuclear facilities.

III. Statutory Authority

Section 17 of the PAAA makes most DOE contractors covered by the DOE Price-Anderson indemnification system, and their subcontractors and suppliers, subject to civil penalties for violations of applicable DOE nuclear safety rules, regulations and orders. 42 U.S.C. 2282a. Furthermore, section 18 of the PAAA makes all employees of DOE contractors, and their subcontractors and suppliers, subject to criminal penalties, including monetary penalties and imprisonment, for knowing and willful violations of applicable DOE nuclear safety rules, regulations and orders. 42 U.S.C. 2273(c). Suspected, or alleged, criminal violations are referred to the Department of Justice for appropriate action. 42 U.S.C. 2271. Therefore, DOE's enforcement policy will apply only to civil penalties. However, referral of a case to the Department of Justice does not preclude DOE from taking civil enforcement action in accordance with this policy statement. Such actions will be coordinated with the Department of Justice to the extent practicable.

IV. Responsibilities

The Office of Nuclear Safety has been assigned by the Secretary of Energy the responsibility to implement the enforcement authority provided the Department in the PAAA. The Director of Enforcement, Office of Nuclear Safety, as the principal enforcement officer of the DOE, has been delegated the authority to issue Notices of Violations and proposed civil penalties.

V. Procedural Framework

10 CFR part 820 of DOE's regulations sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of contested enforcement actions in the event a DOE nuclear entity opts to litigate contested issues before an Administrative Law Judge.

Pursuant to 10 CFR 820.22, the Director of Enforcement initiates the civil penalty process by issuing a Preliminary Notice of Violation and Proposed Civil Penalty (PNOV). The DOE nuclear entity is required to respond, in writing, to the PNOV, either (1) admitting the violation, waiving its right to contest the proposed civil penalty and paying it, (2) admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty, or (3) denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE nuclear entity's response, the Director of Enforcement may (1) determine that no violation has occurred, (2) that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or (3) that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director of Enforcement will issue a Final Notice of Violation (FNOV) or an FNOV and Proposed Civil Penalty. An opportunity to challenge a proposed civil

penalty either before an Administrative Law Judge or in a United States District Court is provided in the PAAA, 42 U.S.C. 2282a(c), and 10 CFR part 820 sets forth the procedures associated with an administrative hearing, should the contractor opt for that method of challenging the proposed civil penalty. A formal administrative enforcement proceeding pursuant to section 554 of the Administrative Procedures Act is not initiated until the DOE nuclear entity against which a civil penalty has been proposed requests an administrative hearing rather than waiving its right to contest the civil penalty and paying it. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of an administrative proceeding or, by consent order, after a formal proceeding has begun.

VI. Severity of Violations

Violations of DOE nuclear safety requirements have varying degrees of safety significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of DOE nuclear safety requirements are categorized in three levels of severity to identify their relative safety significance, and Notices of Violation are issued for noncompliance which, when appropriate, propose civil penalties commensurate with the severity level of the violation(s) involved.

Severity Level I has been assigned to violations that are the most significant and Severity Level III violations are the least significant. Severity Level I is reserved for violations of DOE nuclear safety requirements which involve actual or high potential for adverse impact on the safety of the public or workers at DOE facilities. Severity Level II violations represent a significant lack of attention or carelessness toward responsibilities of DOE nuclear entities for the protection of public or worker safety which could, if uncorrected, potentially lead to an adverse impact on public or worker safety at DOE facilities. Severity Level III violations are less serious but are of more than minor concern: i.e., if left uncorrected, they could lead to a more serious concern. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

Isolated minor violations of DOE nuclear safety requirements will not be the subject of formal enforcement action through the issuance of a Notice of Violation. However, these minor violations will be identified and tracked to assure that appropriate corrective/remedial action is taken to prevent their recurrence. If circumstances demonstrate that a number of related minor violations have occurred in the same time frame (e.g. all identified during the same inspection), or that related minor violations have recurred despite prior notice to the DOE nuclear entity and sufficient opportunity to correct the problem, DOE may choose in its discretion to consider the minor violations in the aggregate as a more serious concern warranting a Severity Level III designation, a Notice of Violation and a possible civil penalty.

The severity level of a violation will be dependent, in part, on the degree of culpability of the DOE nuclear entity with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently than those in which there is gross negligence, deception or wilfulness. In addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE nuclear entity activities and a decrease in protection of public and worker health and safety.

Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE nuclear entity in the particular activity area involved, whether the DOE nuclear entity had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each case.

DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either (1) failure to make a required report or notification to the DOE or (2) an untimely report or notification, will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware, or should have been aware of the condition or event which it failed to report.

VII. Enforcement Conferences

Should DOE determine, after completion of all inspection and investigation activities associated with a potential or alleged violation of DOE nuclear safety requirements, that (1) there is a reasonable basis to believe that a violation has actually occurred, and (2) the violation may warrant a civil penalty or issuance of an enforcement order, DOE will normally hold an enforcement conference with the DOE nuclear entity involved prior to taking enforcement action. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty or enforcement order but which could, if repeated, lead to such action. The purpose of the enforcement conference is to (1) assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based, (2) discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE nuclear entity's corrective actions, (3) determine whether there are any aggravating or mitigating circumstances, and (4) obtain other information which will help determine the appropriate enforcement action.

DOE nuclear entities will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of public or worker health and safety, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Actions

This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties. In determining whether to impose enforcement sanctions, DOE will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, e.g. instances which involve NRC licensed entities which are also DOE nuclear entities, and in which the NRC exercises its own enforcement authority.

The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation. Administrative actions, such as determination of award fees where DOE contracts provide for such determinations, will be considered separately from any civil penalties that may be imposed under this Enforcement Policy. Likewise, imposition of a civil penalty will be based on the circumstances of each case, unaffected by any award fee determination.

A. Notice of Violation

A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of the DOE Office of Nuclear Safety that one or more violations of DOE nuclear safety requirements has occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in Section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe (1) corrective steps which have been taken and the results achieved; (2) remedial actions which will be taken to prevent recurrence; and (3) the date by which full compliance will be achieved.

DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in section VI.B, the notice of violation will be issued in conjunction with

the proposed imposition of a civil penalty. In certain limited instances, as described in section VI.D, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued (1) for willful violations, (2) if past corrective actions for similar violations have not been sufficient to prevent recurrence, and there are no other mitigating circumstances or (3) if the circumstances otherwise warrant increasing Severity Level III violations to a higher severity level.

DOE nuclear entities are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with DOE nuclear safety requirements. Should a contractor believe that a shortage of funding precludes it from achieving compliance with one or more DOE nuclear safety requirements, it must pursue one of two alternative courses of action. First, it may request, in writing, an exemption from the requirement(s) in question from the appropriate Program Secretarial Officer (PSO), explicitly addressing the criteria for exemptions set forth in 10 CFR 820.62. A justification for continued operation for the period during which the exception request is being considered should also be submitted. In such a case, the PSO must grant or deny the request in writing, explaining the rationale for his or her decision. Second, if the criteria for approval of an exception cannot be demonstrated, the contractor, in conjunction with the PSO, must take appropriate steps to modify, curtail, suspend or cease the activities which cannot be conducted in compliance with the DOE nuclear safety requirement(s) in question.

DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all DOE nuclear safety requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

Finally, certain contractors are explicitly exempted from the imposition of civil penalties pursuant to the provisions of the PAAA, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. In addition, in fairness to non-profit educational institutions, the Department has determined that they should be likewise exempted, 10 CFR 820.20. However, compliance with DOE nuclear safety requirements is no less important for these facilities than for other facilities in the DOE complex which work with, store or dispose of radioactive materials. Indeed, the exempted contractors conduct some of the most important nuclear-related research and development activities performed for the Department. Therefore, in order to serve the purposes of this enforcement policy and to emphasize the importance the Department places on compliance with all of its nuclear safety requirements, DOE intends to issue Notices of Violation to the exempted contractors and non-profit educational institutions when appropriate under this policy statement, notwithstanding the statutory and regulatory exemptions from the imposition of civil penalties.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violations of applicable DOE nuclear safety requirements. Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE nuclear entity self-identification, reporting and correction of violations of nuclear safety requirements.

Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in section VII.D, civil penalties will be proposed for Severity Level I and II violations. Civil penalties will be proposed for Severity Level III violations which are similar to previous violations for which the contractor did not take effective corrective action. "Similar" violations are those which could reasonably have been expected to have been prevented by corrective action for the previous violation. DOE normally considers civil penalties only for similar Severity Level III violations that occur after the date of the last Tiger Team Inspection, integrated performance assessment or within two years, whichever period is greater.

DOE will impose different base level civil penalties, considering (1) the severity level of the violation(s), and (2) a categorization of DOE facilities operated by Price-Anderson indemnified contractors. Tables 1A and 1B show the base civil penalties for the various categories of facilities. However, as described above in section IV, the imposition of civil penalties generally takes into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability.

Regarding the factor of ability of DOE nuclear entities to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE nuclear entity out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account.

DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Tables 1A and 1B identify the base civil penalty values for different severity levels, and different categories of facilities. After considering all relevant circumstances, civil penalties may be escalated or mitigated based upon the adjustment factors described below in section VII.C. In no instance will a civil penalty for any one violation exceed $100,000 per day. However, it should be emphasized that if the DOE nuclear entity is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered as a separate violation and, as such, subject to a separate civil penalty. Further, as described above in section IV.D, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1A—BASE CIVIL PENALTIES

Facility categories	Base civil penalty [1]
Category A Reactors, (>20 MWTh)	$100,000
Transuranic material production, processing, reprocessing, handling, storage, or waste disposal facilities; device assembly facilities	75,000
Non-transuranic material production, processing, reprocessing, handling, storage or waste disposal facilities	50,000
Category B reactors (<20 MWTh), including critical facilities [2]	10,000
All other nuclear facilities, including those with inventories consisting solely of sealed sources	10,000

[1] Potential base civil penalties set forth in this table are, pursuant to the PAAA, per day for each violation.

[2] Critical Facilities are experimental facilities used to measure neutron multiplication characteristics (at essentially zero power) of assemblies of fuel, moderator and other materials.

TABLE 1B—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (Percentage of amount in Table 1A)
I	100
II	50
III	20

C. Adjustment Factors

DOE's enforcement program is not an end in itself, but a means to achieve compliance with DOE nuclear safety requirements, and civil penalties are not collected to swell the coffers of the United States Treasury, but to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage (1) early identification and reporting of nuclear safety deficiencies and violations of DOE nuclear safety requirements by the DOE nuclear entities themselves rather than by DOE, and (2) the prompt correction of any deficiencies and violations so identified. DOE believes that DOE nuclear entities are in the best position to identify and promptly correct noncompliance with DOE nuclear safety requirements. DOE expects that these entities should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of nuclear safety-related problems that may constitute,

or lead to, violations of DOE nuclear safety requirements before, rather than after, DOE has identified such violations. Thus, DOE nuclear entities will almost always be aware of nuclear safety problems before they are discovered by DOE. Obviously, public and worker health and safety is enhanced if deficiencies are discovered (and promptly corrected) by the DOE nuclear entity, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of nuclear safety-related problems by DOE nuclear entities has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE nuclear entities.

Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of DOE nuclear safety requirements. Thus, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE nuclear entity.

On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

Further, in cases involving willfulness, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

1. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Tables IA and IB may be given when a DOE nuclear entity identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE nuclear entity does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with DOE nuclear safety requirements or place the facility or operation in a safe configuration are not taken.

2. Corrective Action to Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE nuclear entity takes corrective action, including actions to identify root cause and prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Tables 1A and 1B. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation or corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE nuclear safety requirement results, in part or entirely, from a direction given by DOE personnel to a DOE nuclear entity to either take, or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, and may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE nuclear entity relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 820.60 *et seq.*, no interpretation of a DOE nuclear safety requirement is binding upon DOE unless issued in writing by the General Counsel. Further, as discussed in Section VII[A] of this policy statement, lack of funding will not be considered as a mitigating factor in enforcement actions.

D. Exercise of Discretion

Because DOE wants to encourage and support DOE nuclear entity initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

1. In accordance with the discussion in Section C above, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

a. The violation is promptly identified and reported to DOE before DOE learns of it.

b. The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE nuclear entity's corrective action for a previous violation.

c. The DOE nuclear entity, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

d. The DOE nuclear entity has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

2. DOE may refrain from proposing a civil penalty for a violation involving a past problem, such as in engineering design or installation, that meets all of the following criteria:

a. It was identified by a DOE nuclear entity as a result of a formal effort such as a Safety System Functional Inspection, Design Reconstitution program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;

b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and

c. It was not likely to be identified by routine contractor efforts such as normal surveillance or quality assurance activities.

DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE nuclear entity cannot reasonably be linked to the conduct of that entity in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE nuclear entity upon identification of the past violation to report to DOE and remedy the problem.

3. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

a. It was promptly identified by the DOE nuclear entity;

b. It is normally classified at a Severity Level III;

c. It was promptly reported to DOE;

d. Prompt and appropriate corrective action will be taken, including measures to prevent recurrence; and

e. It was not a willful violation or a violation that could reasonably be expected to have been prevented by the DOE nuclear entity's corrective action for a previous violation.

4. DOE may refrain from issuing a Notice of Violation for an item of noncompliance that meets all of the following criteria:

a. It was an isolated Severity Level III violation identified during a Tiger Team inspection conducted by the Office of Environment, Safety and Health, or during an inspection or integrated performance assessment conducted by the Office of Nuclear Safety.

b. The contractor has initiated or completed appropriate corrective action before the termination of the onsite inspection or integrated performance assessment.

c. The violation is not willful or one which could reasonably be expected to have been prevented by the DOE nuclear entity's corrective action for a previous violation.

In these situations, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action.

5. If DOE initiates an enforcement action for a violation at a Severity Level II or III and, as part of the corrective action for that violation, the DOE nuclear entity identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE nuclear entity acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

IX. Procurement of Products or Services and the Reporting of Defects

DOE's enforcement policy is also applicable to subcontractors and suppliers to DOE Price-Anderson indemnified contractors. Through procurement contracts with these DOE contractors, subcontractors and suppliers are generally required to have quality assurance programs that meet applicable DOE nuclear safety requirements. Suppliers of products or services provided in support of or for use in DOE facilities operated by Price Anderson-indemnified contractors are subject to certain requirements designed to ensure the high quality of the products or services supplied to DOE facilities that could, if deficient, adversely affect public or worker safety. In particular, 10 CFR 830.122 requires that DOE be notified whenever a DOE nuclear entity obtains information reasonably indicating that a DOE facility (including its structures, systems and components) which conducts activities subject to the provisions of the Atomic Energy Act of 1954, as amended or DOE nuclear safety requirements either (1) fails to comply with any provision of the Atomic Energy Act or any applicable DOE nuclear safety requirement or (2) contains a defect or has been supplied with a product or service which could create or result in a substantial safety hazard.

DOE will conduct audits and inspections of its contractors to (1) determine whether they are ensuring that subcontractors and suppliers are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on public or worker radiological safety, and (2) ensure that DOE contractors have in place adequate programs to determine whether products or services supplied to them for DOE facilities meet applicable DOE requirements and that substandard products or services are not used by Price Anderson-indemnified contractors at the facilities they operate for DOE. As part of the effort of ensuring that contractual and regulatory requirements are met, DOE may also audit or inspect subcontractors and suppliers. These inspections could include examination of the quality assurance programs and their implementation by the subcontractors and suppliers through examination of product quality.

When audits or inspections determine that subcontractors or suppliers have failed to comply with applicable DOE nuclear safety requirements or to fulfill contractual commitments designed to ensure the quality of a safety significant product or service, enforcement action will be taken. Notices of Violations and civil penalties will be issued, as appropriate, for DOE contractor failures to ensure that their subcontractors and suppliers provide products and services that meet applicable DOE requirements. Notices of Violations and civil penalties will also be issued to subcontractors and suppliers of DOE contractors which fail to comply with the reporting requirements set forth in 10 CFR 830.72, or any other applicable DOE nuclear safety requirements.

X. Inaccurate and Incomplete Information

A violation of DOE nuclear safety requirements for providing complete and accurate information to DOE, 10 CFR 820.11, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information (See 10 CFR 830.72) identified by a DOE nuclear entity normally will be categorized based on the guidance in Section VI, "Severity of Violations".

DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE nuclear entities concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of DOE reliance on the information; (6) the importance of the information that was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE nuclear entity. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE nuclear entity or others on behalf of the DOE nuclear entity, if a record was made of the oral information and provided to the DOE nuclear entity thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the DOE nuclear entity and was not subsequently corrected in a timely manner.

When a DOE nuclear entity has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE nuclear entity identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE nuclear entity prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

If the initial submission was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was corrected.

The failure to correct inaccurate or incomplete information that the DOE nuclear entity does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE nuclear entity later determines that the initial submission was in error and does not correct it or if there were clear opportunities to identify the error.

XI. Secretarial Notification and Consultatior

The Secretary will be provided written notification of all enforcement actions involving proposed civil penalties. The Secretary will be consulted prior to taking action in the following situations:

(1) Proposals to impose civil penalties in an amount equal to or greater than $100,000;

(2) Any proposed enforcement action that involves a Severity Level I violation;

(3) Any action the Director, Office of Nuclear Safety, believes warrants the Secretary's involvement; or

(4) Any proposed enforcement action on which the Secretary asks to be consulted.

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December 9, 1991

Part III

Department of Energy

10 CFR Part 830

Nuclear Safety Management; Contractor and Subcontractor Activities; Proposed Rule and Public Hearing

DEPARTMENT OF ENERGY

10 CFR Part 830

[Docket No. NE-RM-91-830]

Nuclear Safety Management

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes the addition of a new part to its regulations establishing a body of rules for DOE contractor and subcontractor activities that will form the basic requirements for ensuring nuclear safety at DOE facilities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear, radiological, and chemical hazards posed by these DOE facilities. In addition, violations of these requirements will provide a basis for civil and criminal penalties under the authority established by the Price-Anderson Amendments Act of 1988 (PAAA).

DATES: Written comments (20 copies) should be submitted to the address listed below by February 7, 1992. A hearing will be held on January 14, 1992. Requests to speak at the hearing must be submitted on or before January 8, 1992.

ADDRESSES: Written comments (20 copies) and requests to speak at the hearing should be addressed to:

Stephen Stern, U.S. Department of Energy, Office of Nuclear Energy, NE-72-GTN, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903-2527 or FTS 233-2527.

A hearing will be held at 9 a.m. at: U.S. Department of Energy, Germantown Auditorium Building, 19901 Germantown Road (Route 118), Germantown, MD 20874.

Written comments and the hearing transcript may be examined between 9 a.m. and 4 p.m., Monday through Friday, in: U.S. Department of Energy, Freedom of Information Reading Room, room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (301) 586-6020 or FTS 896-6020.

FOR FURTHER INFORMATION CONTACT:

Stephen Stern, U.S. Department of Energy, Office of Nuclear Energy, NE-72-GTN, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903-2527 or FTS 233-2527.

or

Ben McRae, U.S. Department of Energy, Office of General Counsel, GC-31-FORS, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6975 or FTS 896-6975.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Applicability of these Requirements
- B. Safety Guides

II. Proposed Rules
- A. Section 830.110 Safety Analysis Reports
- B. Section 830.112 Unreviewed Safety Questions
- C. Section 830.120 Quality Assurance Requirements
- D. Section 830.122 Defect Identification and Reporting
- E. Section 830.310 Conduct of Operations at DOE Nuclear Facilities
- F. Section 830.320 Technical Safety Requirements
- G. Section 830.330 Training and Certification
- H. Section 830.340 Maintenance Management
- I. Section 830.350 Categorization, Notification, Reporting, and Processing of Operational Occurrences at DOE Nuclear Facilities

III. Procedural Requirements
- A. Review Under Executive Order 12291
- B. Review Under the Regulatory Flexibility Act
- C. Review Under the Paperwork Reduction Act
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- E. Review Under Executive Order 12612

IV. Public Comment Procedures
- A. Written Comments
- B. Public Hearing

I. Background

Historically, the Department of Energy (DOE) has established nuclear safety requirements for its facilities through a system of internal Departmental Directives (DOE Orders). DOE now proposes to revise this system of establishing nuclear safety requirements through the promulgation of rules. As rules are promulgated covering subjects that were previously covered by DOE Orders, DOE will act to amend or delete the affected Orders or portions thereof. DOE Orders will remain in effect for non-nuclear facilities.

During the past several years, DOE has made a concerted effort to review and improve all aspects of DOE operations and facility safety. This effort was a result of concerns about facility aging, specific operational occurrences, the formality with which DOE operations were conducted, and the rigor and consistency with which DOE Orders were implemented. As a result of these concerns, a 1987 study by the National Academy of Sciences (NAS) was conducted to assess current operations at DOE production reactors. (Two subsequent NAS studies assessed other aspects of nuclear safety in the DOE complex.) The results of this effort highlighted several areas warranting review, including the need for improvement in DOE communications and management (thus providing an increased emphasis on safety), specific guidance for nuclear facilities, and for a better system for assessing the adequacy of implementation of specific requirements.

In 1988, the Price-Anderson Amendments Act (PAAA) was enacted. This act, among other things, subjects DOE contractors, who enter into indemnification agreements under the Price-Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers, to civil and criminal penalties for violations of applicable DOE rules, regulations, or orders related to nuclear safety. The PAAA, coupled with DOE efforts to improve the assurance of safety in its nuclear operations, led DOE to conclude that basic DOE nuclear safety requirements should be established through rulemaking. These requirements would revise and supplement the existing requirements, and in particular, establish specific requirements for applicable DOE nuclear facilities and provide a structured means for measuring the adequacy of the implementation and compliance on a facility-specific basis. Compliance would be measured against specific requirements and against provisions of programs required by these requirements and approved by DOE.

DOE nuclear safety requirements would address four major objectives: (1) Preventing the uncontrolled release of radioactivity to the environment; (2) preventing inadvertent criticality; (3) limiting and monitoring facility staff exposure to radiation and radioactivity; and, (4) protecting the public from exposure to radiation and radioactive contamination. Additional requirements related to protecting facility workers are to be codified in 10 CFR part 835, proposed separately in this issue of the **Federal Register**. 10 CFR part 834, to be published in the later issue, will contain additional requirements related to protecting the public and the environment.

A. Applicability of These Requirements

The rules in part 830 would be applicable to DOE nuclear facilities only. Except as described below, and unless otherwise noted specifically in a particular rule, the rules in this part would apply to all DOE contractors, and their subcontractors and suppliers, for all activities performed for DOE in connection with a DOE nuclear facility.

Part 830 rules would not be applicable to the following:

(1) Activities that are regulated through license by the Nuclear Regulatory Commission (NRC) or a NRC Agreement State.

(2) Activities conducted under the Naval Nuclear Propulsion Program.

(3) Activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations.

The Department would enforce the rules in part 830 (in accordance with procedures to be included in part 820 of title 10) against DOE contractors, subcontractors, and suppliers.

These rules, unlike the current DOE Order system, would not define DOE staff responsibilities in support of facility operations. DOE staff responsibilities related to nuclear safety, including the responsibilities related to the implementation and assessment of implementation of these rules, would be defined in separate documents.

These documents will be promulgated as part of the system of internal Departmental Directives.

B. Safety Guides

As appropriate, rules would be accompanied by Safety Guides. Safety Guides would provide concise information to assist in rule implementation. Safety Guides would be written at a level of detail and specificity appropriate for each topic covered by the rule. Copies of the draft Safety Guides related to the rules proposed in this notice may be examined at the DOE Freedom of Information Act Reading Room and may be obtained by contacting Stephen Stern, Department of Energy, NE-74, 1000 Independence Avenue SW., Washington, DC 20585, or by calling (301) 903-2527.

II. Proposed Rules

The proposed rules included in this notice are individually described as follows: (1) Safety Analysis Reports, requiring the contractor for each facility to analyze the safety of its activities; (2) Unreviewed Safety Questions, allowing operations to be modified through changes, tests, and experiments without prior DOE approval if the defined activity is consistent with and bounded by the facility's Safety Analysis Report and Technical Safety Requirements; (3) Quality Assurance Requirements, requiring the implementation of a formalized quality assurance program; (4) Defect Identification and Reporting, requiring contractors, subcontractors, and suppliers to identify and report defective items and services that pose a substantial safety hazard and have been procured for use at a DOE nuclear facility; (5) Conduct of Operations at DOE Nuclear Facilities, delineating the manner and proper means to carry out activities that can affect the safety of operations; (6) Technical Safety Requirements, setting forth operational limitations based on plant-specific safety analyses; (7) Training and Certification, requiring the implementation of training programs for nuclear facility personnel performing duties important to the safe operation of a facility; (8) Maintenance Management, setting forth those requirements necessary to maintain operational safety by preserving equipment reliability, operability, and functional condition. Each of these rules bears a relationship to the others, forming a cohesive safety framework; and (9) Categorization, Notification, Reporting, and Processing of Operational Occurrences at DOE Nuclear Facilities, requiring that each facility inform specified DOE personnel of any event or condition that has resulted in an actual or potential degradation in safety.

In general, the contractor primarily responsible for the design, construction, operation, or decommissioning of a facility would be responsible for compliance with the proposed rules. Some of the proposed rules do, however, identify other persons. In addition, the proposed general rule makes clear that all persons must act consistently with the proposed rules.

In general, compliance with the proposed rules would be a prerequisite for operation of a nuclear facility. However, the rules would provide, in some cases, for a transition period for existing facilities. For purposes of a particular rule, the determination whether a facility was an existing facility would be based on the effective date of that rule.

The rule concerning Safety Analysis Reports (SARs) would establish requirements for contractors to develop and document the information to be relied upon by DOE for authorizing the initial operation of each facility and to allow its continued operation. Safety Analysis Reports would define the performance capabilities of systems, structures, components, and personnel and would be aimed at confirming the ability of the systems, structures, components, and personnel to perform their intended safety function under normal, abnormal, accident, and specified failure conditions. Therefore, a Safety Analysis Report would establish a safety basis that would provide a foundation for almost every other rule. The Safety Analysis Report for a facility would define the bounds for determining the existence of an Unreviewed Safety Question; would provide the basis for developing and selecting those limits to be set forth in the Technical Safety Requirements; would define, through analysis, those systems, structures, components, and activities that impact safety, which in turn would provide guidance for setting maintenance standards and procedural guidance. The Safety Analysis Report would consider nuclear safety hazards that might be present at a facility.

Technical Safety Requirements would set forth the minimum acceptable limits for operations under normal and specified failure conditions. Technical Safety Requirements would be a distillation of those aspects of Safety Analysis Reports that are required in order to ensure the performance of systems, structures, components, and personnel. Technical Safety Requirements also would set limits for operations under certain failure conditions. These limits would be derived from the safety analysis and risks associated with each failure condition. Technical Safety Requirements would define those limits that could not be changed without prior DOE authorization. They also would establish, along with the Safety Analysis Report, the basis for authorizing a facility to operate. This authorization basis would be relied upon for determining an Unreviewed Safety Question under § 830.112. Technical Safety Requirements would set forth surveillance requirements that would be intended to check the material and performance conditions of systems, structures, and components that would provide input into the maintenance management program. Technical Safety Requirements would establish administrative and staffing requirements that would be supported by programs for training, quality assurance, and the conduct of operations.

The rule covering determination of Unreviewed Safety Questions is intended to preserve the authorization basis, while avoiding burdening the DOE review and approval process with a requirement for prior approval of all changes.

The rule covering Maintenance Management would set forth standards to preserve and maintain the material condition and functioning of all systems and components as set forth in the Safety Analysis Report and Technical Safety Requirements for each facility. This rule also would set forth standards

for the conduct of maintenance and post-maintenance testing.

The rule for addressing Defect Identification and Reporting would require DOE contractors, subcontractors, and suppliers to identify, evaluate, and report defective items and services. The rule would ensure that all DOE facilities known or suspected to have used defective items and services would be notified so that appropriate corrective action could be taken.

Categorization, Notification, Reporting, and Processing requirements contained in proposed § 830.350 would bear an indirect relationship to other rules being promulgated in that the trending and analysis of these problems and their causes would provide significant input for improvements to operations, programs, and the implementation of new requirements.

The rules covering Quality Assurance, Conduct of Operations, and Training and Certification all would set performance standards for management and personnel necessary to ensure the integrity of work products and the conduct of duties and activities. These requirements would be integrated into all aspects of facility design, operations, and maintenance.

The requirements contained in each of these proposed rules are summarized below:

A. Section 830.110 Safety Analysis Reports

The contractors responsible for design, construction, operation or decommissioning of DOE nuclear facilities would have to perform safety analyses that establish and evaluate the adequacy of the safety basis of each facility and prepare Safety Analysis Reports (SARs) to document the findings of the safety analyses. The SARs would be reviewed and approved by DOE. The SAR would define the safety basis, document the logic of its derivation, and justify its adequacy.

For existing facilities, the rule would require contractors to upgrade existing SARs. The rule also would require the contractor responsible for each facility to define and analyze its design/operating basis and its current configuration. The rule would require the inclusion of an aspect to safety that is broader than those previously defined by DOE Order requirements, which dealt primarily with hardware and design. The rule would set forth topical areas that must be addressed in each SAR, including facility description and operation, principal safety criteria, external hazards analysis, accident analysis, procedures and training, human factors, quality assurance, management organization, derivation of technical safety requirements, radiation protection, and operations. The rule would call for a level of effort and documentation commensurate with the hazard inherent in the facility and its spectrum of accident analysis. The rule would require periodic updating of SARs. For nuclear facilities, § 830.110 would supersede the requirements contained in several DOE Orders, principally DOE 5481.1B. The Department is continuing to refine the criteria on hazard classification presented in § 830.110(d) and is particularly interested in obtaining public comment on this matter.

B. Section 830.112 Unreviewed Safety Questions

A situation outside the bounds of the current safety analysis for a nuclear facility (as documented in its Safety Analysis Report) would constitute an Unreviewed Safety Question. Section 830.112 would permit contractors to make changes and to conduct tests and/or experiments when these activities had been determined not to involve an Unreviewed Safety Question (and when they did not require a change in the Technical Safety Requirements). This determination would have to be documented and reviewed as set forth in the rule. This rule also would require that if an error or discrepancy in the facility analysis were discovered that might reduce the margin of safety, the requirements of § 830.112 would have to be applied and an Unreviewed Safety Question evaluation would have to be completed. The intent of this proposed rule is to allow contractors the needed flexibility to conduct day-to-day operations when proposed changes do not impact the facility authorization basis relied upon by DOE, requiring that only those changes with a potential impact on the safety basis of the facility be subject to prior approval by DOE, and thereby maintaining the proper safety focus. Proposed § 830.112 is based on DOE 5481.1B, 5480.5, and 5480.6 and on NRC's similar rule (10 CFR 50.59). For DOE nuclear facilities, § 830.112 would supersede paragraphs 5s 7b(19), 7c(9), and 7e(13) of DOE 5480.5 and paragraphs 5x, 7b(18), 7c(14), and 7e(19) of DOE 5480.6.

C. Section 830.120 Quality Assurance Requirements

This rule would mandate the development and implementation of a formalized quality assurance program to address three functional areas of work that constitute quality assurance: Management, performance, and assessment. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed quality assurance programs and would evaluate contractors' performance against the approved program. This proposed rule is based, in part, on the experience of the Nuclear Regulatory Commission in implementing the quality assurance requirements of 10 CFR part 50 appendix B, and parallels chapter 17.3 of the NRC Standard Review Plan (NUREG–0800). For nuclear facilities, this rule would supersede the existing guidance in DOE Order 5700.6, "Quality Assurance."

D. Section 830.122 Defect Identification and Reporting

This rule would require DOE contractors, subcontractors, and suppliers to identify, evaluate, and report defective items and services. It would establish requirements to ensure that DOE contractors were cognizant of defects that posed an actual or potential substantial safety hazard. The rule would ensure that all DOE facilities known or suspected to have used defective items or services were notified so that appropriate corrective action could be taken. The rule is based, in part, on the NRC provision set forth in 10 CFR part 21.

E. Section 830.310 Conduct of Operations at DOE Nuclear Facilities

This rule would require the contractor for each facility to implement a program and procedures to provide the proper level of guidance for operations to be conducted in an organized and disciplined manner. This rule would ensure establishment of the responsibilities of personnel, as well as to ensure that the tools needed to conduct those responsibilities in a safe and reliable manner are provided. This rule would require that operations be managed, organized, and conducted in a manner to ensure an acceptable level of safety; that personnel have procedures in place to control their operations; that contractor line organizations review existing and planned programs important to safe and reliable operations; and that contractor line organizations assess the effectiveness of corporate directives, plans, or procedures at facilities under their cognizance. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed plans for the conduct of operations and evaluate contractor compliance against the approved program. For nuclear facilities, § 830.310 would supersede DOE 5480.19.

F. Section 830.320 Technical Safety Requirements

This rule would set forth requirements for the scope, format, and technical content of Technical Safety Requirements. The resulting document would replace the Technical Specifications used for nuclear reactors and the Operational Safety Requirements used for non-reactor nuclear facilities. Technical Safety Requirements would define the conditions under which operations must be carried out at a DOE reactor or non-reactor facility. Technical Safety Requirements would be derived from the facility-specific Safety Analyses Report. Prevention and mitigation of radioactive and nonradioactive hazardous material releases and inadvertent criticality would be addressed in the development of the Technical Safety Requirements, which must include Operational Limits, Technical and Administrative Controls, Design Features, Surveillance Requirements, and the basis for each of these limits as derived from the Safety Analysis Report.

Systems, structures, and components acting as barriers against release of radioactive or other hazardous materials would be required to be identified. Parameters that indicate the potential for, or actual breach of, those barriers would be among those to be included in the Technical Safety Requirements, as well as instruments relied upon to measure these parameters. Limits for Technical Safety Requirements would be commensurate with the potential consequences of a barrier breach.

Surveillance testing requirements for systems, structures, components, instruments, and controls needed to support the operating limits for the detection and prevention of the uncontrolled release of radioactive or other hazardous materials also would have to be included. The frequency of surveillance tests also would have to be established.

DOE would review and approve contractor-proposed Technical Safety Requirements. Contractors would have to comply with their DOE-approved Technical Safety Requirements.

The proposed rule is based, in part, on NRC's experience in use of Technical Specifications to control operation of commercial nuclear power plants and particularly considers NRC's Technical Specifications Improvement Program. Section 830.320 would replace existing requirements contained in DOE 5480.5 and 5480.6.

G. Section 830.330 Training and Certification

This rule would require the contractor for each nuclear facility to develop and implement a training and certification program. This program would ensure that operators and supervisors whose performance was vital to the safe operation of DOE nuclear facilities would be trained to conduct their duties in a safe and effective manner. The rule would set forth the requirements for initial and continuing training programs; the administration of written, operational, and medical examinations; control manipulation lists for normal, abnormal, and emergency operations; operator proficiency; documentation of the use of, or need for, full-scope or partial-task simulators; and maintenance of records to document training and certification. This rule would ensure that initial and continuing training be conducted and documented to demonstrate that operators and supervisors have learned to operate the nuclear facility competently and safely. The rule would also require the establishment of training and qualification programs for other nuclear facility personnel important to the safe operation of a facility. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed programs for training and certification of operators and supervisors and the training and qualification programs for other nuclear facility personnel, and evaluate contractor compliance against the approved program. These programs would reflect the specific needs of Category A reactor facilities, Category B reactor facilities, and non-reactor nuclear facilities. Proposed § 830.330 is based on DOE 5480.5 and 5480.6, the recently issued DOE 5480.20, and NRC's training requirements in 10 CFR part 55. For nuclear facilities, this rule would supersede DOE 5480.20 and those portions of DOE 5480.5 and 5480.6 that deal with training.

H. Section 830.340 Maintenance Management

This rule would require the contractor for each nuclear facility to develop a maintenance program that included identification of all structures, systems, and components performing a safety function (as defined in the Safety Analysis Report); a description of the maintenance organization (including structure, authorities, responsibilities, qualifications, and resources); a description of procedures for conducting and documenting maintenance activities; a description of inspection and testing programs and/or activities necessary for continued detection of material and functional conditions; and provisions for self-assessment of program effectiveness and the implementation of assessment feedback. Each DOE nuclear facility contractor would be required to develop a Maintenance Implementation Plan for each nuclear facility under its cognizance. To ensure consistency with the intent of the proposed rule, DOE would review and approve contractor-proposed Maintenance Implementation Plans and evaluate contractor compliance against the approved plan. For nuclear facilities, this rule would supersede DOE 4330.4A.

I. Section 830.350 Categorization, Notification, Reporting, and Processing of Operational Occurrences at DOE Nuclear Facilities

This rule would require the contractor responsible for each nuclear facility to identify and report all occurrences meeting threshold requirements defined in the rule. The rule would set forth time limitations for oral and documented notification, define occurrence categories based on the safety significance or the potential safety impact of the occurrence, and require that analysis be completed to determine event causes, thereby allowing the implementation of appropriate corrective actions. In addition, it would require contractors to develop and implement lessons learned from the operating experience information generated by these requirements. Contractors would be required to develop procedures for application of the proposed rule at their facilities. DOE would approve these procedures and evaluate contractor compliance against them as well as against the specific requirements established in the rule. Proposed § 830.350 is based on DOE 5000.3A and the similar NRC rules (10 CFR 50.72, and 10 CFR 50.73). For DOE nuclear facilities, this rule would supersede DOE 5000.3A.

III. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." DOE has concluded that this action is not a "major rule." DOE has concluded that this action is not a "major rule" for purpose of the Executive Order because its promulgation will not result in any of the following: (1) An annual effect on

the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export market.

Pursuant to section 3(c) of E.O. 12291, this rule was submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements in this part are not substantially different from existing reporting requirements contained in DOE contracts with DOE prime contractors covered by this rule. DOE will submit the collection of any new information requests concerning this proposed rule to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

D. Review Under the National Environmental Policy Act

The DOE has reviewed the promulgation of this rule with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508). The environmental impacts of the proposed action have been found to be clearly insignificant.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41,685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

DOE's proposed rule, when finalized, will not have a substantial direct effect on the institutional interests or traditional functions of States.

IV. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rules set forth in this notice. Twenty copies of written comments should be submitted to the address indicated in the "**ADDRESSES**" section of this notice. All comments received will be available for public inspection in the DOE Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the "DATES" section of this notice will be carefully assessed and fully considered prior to publication of the final rules. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, DOE contractors, or DOE. DOE is particularly interested in comments that discuss whether or not DOE may be subjecting its contractors to additional costs that are not contemplated by existing contractual relations or the PAAA. Comments concerning this subject should address the specific nature and scope of the additional costs to which contractors would be subjected and explain why these concerns are not already addressed in the current contractual relationship or PAAA.

B. Public Hearing

Requests to speak at the hearing must be submitted to the address indicated in the "**ADDRESSES**" section of this notice and received by the date indicated in the *"Dates"* section of this Notice. Requests for oral presentations should contain a telephone number where speakers may be contacted prior to the hearing. Speakers are requested to submit 20 copies of their statement to DOE at the hearing.

DOE reserves the right to select the persons to be heard at the hearing, in the event there are more requests to be heard than time allows, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes. The hearing will begin at 9 a.m.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made available to the public. The entire record of the hearing, including the transcript, will be retained by DOE and made available for public inspection and copying in the DOE Freedom of Information Office, 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts may be purchased from the court reporter.

List of Subjects in 10 CFR Part 830

Federal buildings and facilities, Nuclear energy, Nuclear material, Nuclear reactors, Reporting and recordkeeping requirements and Safety.

Issued in Washington, DC, on November 20, 1991.

John C. Tuck,

Under Secretary.

For the reasons set forth in the preamble, title 10, chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 830 as follows:

PART 830—NUCLEAR SAFETY MANAGEMENT

Sec.

830.1 Scope.
830.2 Exclusions.
830.3 Definitions.
830.4 General Rule.
830.5 Enforcement.
830.6 Records.
830.7 Graded Approach.

Subpart A—General Provisions

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830.110 Safety analysis reports.
830.111 Configuration management.
[Reserved]
830.112 Unreviewed safety questions.

830.120 Quality assurance requirements.
830.121 Software control. [Reserved]
830.122 Defect identification and reporting
830.130 Human factors. [Reserved]
830.131 Fitness for duty. [Reserved]
830.132 Safety concern management. [Reserved]
830.140 Decontamination and decommissioning. [Reserved]

Subpart B—Design

830.200 Scope.
830.210 Reactor design criteria. [Reserved]
830.211 Non-reactor nuclear facility design criteria. [Reserved]
830.212 Facility protection systems. [Reserved]
830.213 Fire protection. [Reserved]
830.214 Environmental qualification. [Reserved]
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Subpart C—Operations

830.300 Scope.
830.310 Conduct of operations at DOE nuclear facilities.
830.320 Technical safety requirements.
830.330 Training and certification.
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830.341 Material condition and aging. [Reserved]
830.350 Categorization, notification, reporting, and processing of operational occurrences at DOE nuclear facilities.
830.351 Performance indicators. [Reserved]
830.360 Criticality safety. [Reserved]
830.370 Emergency preparedness. [Reserved]

Subpart D—Material Management

830.400 Scope.
830.410 Packaging for transport. [Reserved]
830.420 Transportation. [Reserved]
830.430 Disposal. [Reserved]

Authority: 42 U.S.C. 2201; 7191

§ 830.1 Scope.

The rules in this part govern the conduct of DOE Contractors and other persons at DOE nuclear facilities.

§ 830.2 Exclusions.

The rules in this part do not apply to:

(a) Activities that are regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission;

(b) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, as described in Public Law 98–525; or

(c) Activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations.

§ 830.3 Definitions.

(a) The following definitions apply to this part:

Administrative Controls means provisions relating to organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility.

Administrative Limits means those procedural limits, self-imposed by the contractor, relating to nuclear safety. These limits are generally more restrictive and specific than externally imposed limits by Federal, State, or other entities.

Category A reactor facilities means those production, test, and research reactors designated by DOE based on power level (e.g., design thermal power rating of 20 megawatts steady state and higher), potential fission product inventory, and experimental capability.

Category B reactor facilities means those test and research reactors designated by DOE based on power level (e.g., design thermal power rating of less than 20 megawatts steady state), potential fission product inventory, and experimental capability.

Certification means the process by which contractor nuclear facility management provides written endorsement of the satisfactory achievement of qualification of a person for a position.

Contractor means any person under contract with the Department of Energy with responsibility to perform activities in connection with a nuclear facility.

Controlled Document means a document whose content is maintained uniform among the copies by an administrative control system.

Controls means, when used with respect to nuclear reactors, apparatus and mechanisms that, when manipulated, directly affect the reactivity or power level of a reactor or the status of an engineered safety feature. When used with respect to any other nuclear facility, "controls" means apparatus and mechanisms that, when manipulated could affect the chemical, physical, metallurgical, or nuclear process of the nuclear facility in such a manner as to affect the protection of health and safety.

Department or *DOE* means the Department of Energy.

Design Basis Accidents or DBA means accidents that are postulated for the purpose of establishing functional requirements for safety significant structures, systems, components, and equipment.

Document means recorded information that describes, specifies, reports, certifies, requires, or provides data or results. A document is not considered a record until it meets the definition of record.

DOE Facility Representative means the individual, or his designee for each major facility or group of lesser facilities, who is assigned responsibility by DOE for monitoring the performance of the facility and its operations

Existing Facility means a DOE nuclear facility that has received authorization to operate on or before the effective date of the requirement, or if authorization is not required, a DOE nuclear facility that has begun normal operation on or before the effective date of the requirement.

Facility Manager means that individual, or his designee, who exercises the authority of a contractor for the design, construction, operation, or decommissioning of a DOE nuclear facility or group of related facilities, including authority to direct physical changes to the facility.

Federally permitted release means any release that satisfies the definition of "federally permitted release" in 40 CFR 302.3.

Final SAR or FSAR means the SAR submitted to and approved by DOE prior to the authorization to operate a new nuclear facility.

Fissionable materials means nuclides capable of sustaining a neutron-induced fission chain reaction (e.g., uranium-233, uranium-235, plutonium-238, plutonium-239, plutonium-241, neptunium-237, americium-241, and curium-244).

Graded Approach means a process by which the level of analysis, documentation, and actions necessary to comply with a requirement in this part are commensurate with:

(1) The relative importance to safety, safeguards, and security;

(2) The magnitude of any hazard involved;

(3) The life cycle stage of a facility;

(4) The programmatic mission of a facility;

(5) The particular characteristics of a facility; and

(6) Any other relevant factor.

Hazard means a source of danger (i.e., material, energy source, or operation) with the potential to cause illness, injury, or death to personnel or damage to a facility or to the environment (without regards for the likelihood or credibility of accident scenarios or consequence mitigation).

Hazardous substance or material means any solid, liquid, or gaseous material that is toxic, explosive, flammable, corrosive, or otherwise physically or biologically threatening to health. Oil is excluded from this definition.

Item is an all-inclusive term used in place of any of the following: Appurtenance, assembly, component, equipment, material, module, part,

structure, subassembly, subsystem, system, unit, or support systems.

Limiting Conditions for Operation or LCOs means the limits that represent the lowest functional capability or performance level of safety-related items required for the safe operation of a facility.

Limiting Control Settings or LCSs means the settings on process variables associated with safety systems that control the facility function and will prevent exceeding the associated safety limit.

Medical examination means an examination performed by a licensed medical physician to determine the physical condition and general health of a person for duty.

New Facility means a DOE nuclear facility that does not qualify as an existing facility.

Non-reactor nuclear facility means those activities or operations that involve radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists to the employees or the general public. Included are activities or operations that—

(1) Produce, process, or store radioactive liquid or solid waste, fissionable materials, or tritium;

(2) Conduct separations operations;

(3) Conduct irradiated materials inspection, fuel fabrication, decontamination, or recovery operations;

(4) Conduct fuel enrichment operations; or

(5) Perform environmental remediation or waste management activities involving radioactive materials.

Incidental use and generating of radioactive materials in a facility operation (e.g., check and calibration sources, use of radioactive sources in research and experimental and analytical laboratory activities, electron microscopes, and X-ray machines) would not ordinarily require the facility to be included in this definition. Accelerators and reactors and their operations are not included. The application of any rule to a non-reactor nuclear facility shall be applied using a graded approach.

Nuclear facility means reactor and non-reactor nuclear facilities.

Nuclear facility operator means a person certified by contractor nuclear facility management to manipulate or handle fissionable materials radioactive materials, or tritium or to manipulate the controls of equipment used or produce, process, transfer, store, or package such materials at DOE non-reactor nuclear facilities. Personnel in these positions typically include fissionable material handlers, tritium operators, chemical process operators, waste tank operators, and enrichment plant operators.

Nuclear facility supervisor means a person certified by contractor nuclear facility management to manipulate, handle, or direct the manipulation or handling of fissionable materials, radioactive materials, or tritium or to manipulate or direct the manipulation of the controls of equipment used to produce, process, transfer, store, or package such materials at DOE non-reactor nuclear facilities. Personnel in these positions typically include fissionable material handler supervisors, tritium operator supervisors, chemical process operator supervisors, waste tank operator supervisors, and enrichment plant operator supervisors.

Occurence Report means a documented evaluation of an event or condition that is prepared in sufficient detail to enable the reader to assess its significance, consequences, or implications and to evaluate the actions being proposed or employed to correct the event or condition or to avoid recurrence.

Operating Limits means those limits which are required for nuclear facilities to ensure the safe operation of the facility. Specifically, these limits include Safety Limits, Limiting Control Settings, and Limiting Conditions for Operation.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department or the United States Nuclear Regulatory Commission.

Preliminary SAR or PSAR means the SAR submitted to and approved by DOE prior to the construction and preoperational testing of a nuclear facility.

Process means a system of actions designated to achieve an end or result.

Program Manager means the DOE Headquarters (HQ) individual, or his designee appointed by and under the direction of a Program Secretarial Officer, who is directly involved in the operation of a facility under his cognizance and who holds signature authority to provide technical direction through DOE Field Organizations to DOE contractors for these facilities.

Program Secretarial Officers (PSOs) means the heads of DOE offices with responsibility for specific DOE nuclear facilities. These include the Assistant Secretaries for Nuclear Energy, and Defense Program and the Directors of Energy Research, Civilian Radioactive Waste Management, Environmental Restoration and Waste Management, and New Production Reactors.

Quality means the degree to which an item or process meets, fails to meet, or exceeds the user's requirements and expectations.

Quality Assurance means all those actions that provide confidence that quality is achieved.

Quality Assurance Program or QAP means the overall program for a DOE nuclear facility which assigns responsibilities and authorities, defines policies and requirements, and provides for the performance and assessment of work.

Reactor means, unless it is modified by word such as containment, vessel, or core, the entire nuclear reactor facility, including the housing, equipment, and associated areas devoted to the operation and maintenance of one or more reactor cores. Any apparatus that is designed or used to sustain nuclear chain reactions in a controlled manner, including critical and pulsed assemblies and research, test, and power reactors, is defined as a reactor. All assemblies designed to perform subcritical experiments that could potentially reach criticality are also to be considered reactors. Critical assemblies are special nuclear devices designed and used to sustain nuclear reactions. Critical assemblies may be subject to frequent core and lattice configuration change and may be used frequently as mockups of reactor configurations.

Reactor operator means a person certified by contractor nuclear facility management to operate (manipulate the controls of) a DOE-owned reactor.

Record means a completed document or other media that provides objective evidence of an item or process.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of substances into the environment. This includes abandoning/discarding any type of receptacle containing substances or the stockpiling of a reportable quantity of a hazardous substance in unenclosed containment structures.

Reportable Occurrence means an event or condition to be reported in accordance with the criteria in this part.

Reportable Quantity means, for any Comprehensive Environmental Response, Compensation and Liability

Act (CERCLA) hazardous substance, the quantity established in Table 302.4 of § 302.4 and appendix B of 40 CFR part 302, the release of which requires notification unless federally permitted.

Risk means the quantitative or qualitative expression of possible loss that considers both the probability that a hazard will cause harm and the consequences of that event.

Safety Analysis means a documented process: (1) To provide systematic identification of hazards within a given DOE operation; (2) to describe and analyze the adequacy of the measures taken to eliminate, control, or mitigate identified hazards; and (3) to analyze and evaluate potential accidents and their associated risks.

Safety Analysis Report or SAR means that report which documents the adequacy of safety analysis for a nuclear facility to ensure that the facility can be constructed, operated, maintained, shut down, and decommissioned safely and in compliance with applicable laws and regulations.

Safety Basis means the combination of information relating to the control of hazards at a nuclear facility (including design, engineering analyses, and administrative controls) upon which DOE depends for its conclusion that activities at the facility can be conducted safely.

Safety Limit or SL means a limit on process variables associated with those passive physical barriers that are necessary for the intended facility function and that required to guard against the uncontrolled release of radioactive or other hazardous materials.

Senior reactor operator means a person certified by contractor nuclear facility management to operate and direct the operation of a DOE-owned reactor.

Service means the performance of work, such as design, fabrication, inspection, nondestructive examination, repair, or installation.

Surveillance Requirement or SR means a requirement relating to test, calibration, or inspection that ensures the necessary operability and quality of safety-related items required for the safe operation of a facility.

Technical Safety Requirements or TSRs means those requirements that define the conditions, safe boundaries, and the management or administrative controls necessary to the safe operation of a nuclear facility and to reduce the potential risk to the public and facility workers from uncontrolled releases of radioactive materials or from radiation exposures due to inadvertent criticality. A TSR consists of operating controls, use and application instructions, and the bases thereof.

TSR Bases means the reasons for operating limits, surveillance requirements, administrative controls, and use and application instructions.

TSR Design Features means the passive design features of a facility that, if altered, or modified, would have a significant effect on the safe operation of the facility.

(b) Terms defined in the Act and not defined in these results are used consistent with the meanings given in the Act.

(c) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 830.4 General rule.

(a) No person shall take or cause to be taken any action inconsistent with the requirements of this part or any program, plan, schedule, or other process established by this part.

(b) With respect to a particular DOE nuclear facility, the contractor responsible for the design, construction, operation, or decommissioning of that facility shall be responsible for implementation of and compliance with the requirements of this part.

§ 830.5 Enforcement.

The requirements in this part are subject to enforcement by all appropriate means, including the imposition of civil and criminal penalties in accordance with the provisions of part 820 of this chapter.

§ 830.6 Records.

A person shall maintain complete and accurate records as necessary to substantiate its compliance with the requirements of this part.

§ 830.7 Graded approach.

(a) Where indicated in a subpart, a graded approach shall be utilized to comply with the requirements.

(b) Any submission to DOE concerning a requirement shall indicate whether a graded approach is being utilized to comply with the requirement and shall set forth the justification for the graded approach.

Subpart A—General Provisions

§ 830.100 Scope of subpart.

This subpart prescribes requirements that are generally applicable to more than one phase of the life cycle of a DOE nuclear facility.

§ 830.110 Safety analysis report.

(a) *General rule.* A contractor responsible for a DOE nuclear facility shall—

(1) Perform a safety analysis that develops and evaluates the adequacy of the safety basis for the facility;

(2) Prepare an SAR, including a hazard analysis, to document the safety analysis and submit the SAR to DOE for approval; and

(3) Carry out its responsibilities concerning the facility in accordance with the SAR, as approved and modified by DOE.

(b) *Graded approach.* A graded approach shall be used in preparation of an SAR. Justification for the level of analysis and documentation shall be provided for each hazard considered.

(c) *Scope and content of Safety Analysis Reports.* A SAR shall:

(1) Define the safety basis;

(2) Document the logic of its derivation;

(3) Justify its adequacy;

(4) Document the assumptions employed in the safety analysis;

(5) Set forth the results of the safety analysis.

(d) *Contents of Safety Analysis Report.* A SAR shall contain sections that set forth:

(1) Executive summary;

(2) Applicable statutes, rules, and Departmental orders;

(3) Site characteristics;

(4) Facility description and operation including design of principal structures, components, systems, engineered safety features, and processes;

(5) Hazard analysis and classification of the facility under paragraph (e) of this section;

(6) Principal safety criteria;

(7) Radioactive waste management;

(8) Inadvertent criticality protection;

(9) Radiation protection;

(10) Analysis of normal, abnormal, and accident conditions, including design basis accidents; assessment of risks; consideration of natural and man-made external events; assessment of contributory and causal events, mechanisms, and phenomena; and consideration of the need for analysis of beyond-design-basis accidents;

(11) Management, organization, and institutional safety provisions;

(12) Procedures and training;

(13) Human factors;

(14) Initial testing, in-service surveillance, and maintenance;

(15) Derivation of Technical Safety Requirements;

(16) Operational safety;

(17) Quality assurance;

(18) Emergency preparedness; and

(19) Provisions for decontamination and decommissioning.

(e) *Hazard classification for DOE nuclear facilities and operations.* A contractor shall perform a hazard analysis for a DOE nuclear facility in accordance with the following requirements.

(1) *Classification Categories.* The consequences of unmitigated releases of radioactive material shall be evaluated facilities and classified by the following hazard categories:

(i) *Category 1 hazard.* The hazard analysis shows the potential for significant off-site consequences.

(ii) *Category 2 hazard.* The hazard analysis shows the potential for significant on-site consequences.

(iii) *Category 3 hazard.* The hazard analysis shows the potential for only localized consequences.

(2) *Inventory of hazardous materials.* The hazard analysis shall be based on an inventory enveloping all radioactive materials that are stored, utilized, or may be formed within a nuclear facility.

(3) *Evaluation of potential releases.* The hazard analysis shall identify energy sources or processes that might contribute to the generation or uncontrolled release of radioactive materials. The hazard analysis shall estimate the consequences of accidents in which the facility or process and/or materials in the inventory are assumed to interact, react, or be released in a manner to produce a threat or challenge to the health and safety of individuals, on and off site.

(4) *Submission of hazard analysis to DOE.* The hazard analysis shall be submitted to DOE for approval:

(i) For a new facility, as part of the Preliminary SAR (PSAR); or

(ii) For a facility subject to paragraph (g) of this section, in accordance with the safety analysis plan and schedule required by paragraph (g)(2) of this section.

(f) *Approval of Safety Analysis Reports for new DOE nuclear facilities.* (1) A contractor shall obtain DOE approval of a PSAR prior to construction and preoperational testing of a new facility; provided that DOE authorize limited activities of this type without approval of a PSAR. A PSAR shall document the adequacy of the safety basis for a new nuclear facility and provide assurance that the facility can be constructed, operated, maintained, and shut down safely and in compliance with applicable laws and regulations.

(2) A contractor shall submit the FSAR to DOE for approval prior to the authorization to operate a new facility. A FSAR shall document the adequacy of the safety basis and provide assurance that the facility can be operated, maintained, and shut down safely and in compliance with applicable laws and regulations.

(3) DOE may direct, in writing, that the PSAR and FSAR for a facility be merged into a single SAR that meets the requirements of paragraphs (f)(1) and (f)(2) of this section. DOE may also direct, in writing, that a SAR be submitted in stages.

(4) If a SAR for a new facility is scheduled to be submitted before one year after the effective date of this section, contractors shall comply with the requirements of paragraph (g) of this section.

(g) *Preparation and submittal of upgraded Safety Analysis Reports for existing DOE nuclear facilities.* (1) A contractor of an existing facility shall implement a program to upgrade, as necessary, the safety analysis for the facility to reflect the current safety basis and to bring the safety analysis and SAR for the facility into compliance with this section and provide assurance that the facility can be operated, maintained, and shut down safely and in compliance with applicable laws and regulations. Upgraded SARs shall be submitted to DOE for approval in accordance with the plan and schedule required by paragraph (g)(2) of this section.

(2) *Plan and schedule for Safety Analysis Reports.* Within 6 months of the effective date of this section, each contractor subject to paragraph (f) (1) of this section shall submit to the Department, for its review and approval, an overall plan and schedule for complying with paragraph (g)(1) of this section. This submittal shall describe the need for upgrading the SAR and shall include a preliminary assessment of facility hazards; the basis for the content, schedule, and level of detail proposed; bases for interim operation or restrictions on interim operations; and administrative controls during the upgrade process. The plan and schedule submitted by a contractor shall be considered approved 180 days after submittal, unless it is approved or rejected by DOE at an earlier date and shall contain any changes made or directed by DOE. Any change to an approved plan or schedule must be approved by DOE. The contractor shall comply with the plan and schedule, as approved and modified by DOE.

(h) *Periodic updates of Safety Analysis Reports.* A contractor of a nuclear facility shall annually update the SAR for the facility to ensure that the information in the SAR is current, remains applicable, and reflects all changes implemented up to 6 months prior to the filing of the updated SAR. The DOE approval of any Unreviewed Safety Question pursuant to § 830.112, and the material submitted by the contractor to DOE in support of that approval, shall be considered an addendum to the SAR until the information is incorporated into the SAR as part of the next periodic update.

(i) *Additional information.* DOE may require a contractor to prepare and submit at any time to DOE additional information necessary to supplement an SAR in order to facilitate a DOE decision regarding the safety of a facility.

(j) *Document control.* A contractor must maintain such document control as may be necessary to ensure that all users of a SAR designated by DOE or the contractor as authorized users, including DOE line management and the Department's safety oversight groups, have a current edition.

§ 830.111 Configuration management. [Reserved]

§ 830.112 Unreviewed safety questions.

(a) A contractor responsible for the operation of a DOE nuclear facility shall:

(1) Perform all safety evaluations required by paragraph (b) of this section to determine whether a situation involves a USQ;

(2) Prior to implementation of a proposed action, obtain DOE approval for situations determined to involve a USQ or a change in a TSR; and

(3) Develop and implement procedures to govern the need for, and the performance of, safety evaluations under this section.

(b) A safety evaluation shall be performed for:

(1) Temporary or permanent changes in the facility as described in the existing safety analyses;

(2) Temporary or permanent changes in the procedures as derived from existing safety analyses; or

(3) Test or experiments not described in existing safety analyses.

(c) A situation involves a USQ if:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the facility safety analyses could be increased;

(2) the possibility for an accident or malfunction of a different type than any evaluated previously in the facility safety analyses could be created; or

(3) Any margin of safety, as defined in the bases of the TSRs, could be reduced.

(d) When a contractor identifies information that indicates a potential inadequacy of previous analyses as defined in the SAR or a possible reduction in safety margins as defined in the TSRs, the contractor shall:

(1) Notify DOE of the situation upon discovery of the information;

(2) Make an evaluation in accordance with paragraphs (a) and (c) of this section;

(3) Take action to place the facility in a safe condition until the safety evaluation is completed; and

(4) Submit the completed safety evaluation prior to removing any operational restrictions initiated pursuant to paragraph (d)(2) of this section.

(e) For all safety evaluation required under this section, a contractor shall:

(1) Document the basis for the USQ determination, utilizing the procedures provided for in paragraph (a)(3) of this section and the criteria of paragraph (c) of this section;

(2) Maintain documentation required by paragraph (e)(1) of this section for the authorized operating period of the facility and ensure the complete transfer of all documentation to any subsequent contractor prior to termination of its contract;

(3) Incorporate in the existing SAR for the facility, pursuant to § 830.110(g), any changes that are needed as a result of the safety evaluation or any action taken pursuant to this section; and

(4) Submit to DOE, on a schedule corresponding to the updates of the SAR for the facility, a report summarizing all situations for which a safety evaluation was required by this section and indicating all "changes" considered in a safety evaluation and implemented 6 months or more before the submittal date of the report.

§ 830.120 Quality assurance requirements.

(a) *General rule.*

(1) A contractor responsible for a DOE nuclear facility shall:

(i) Conduct its activities in accordance with the criteria of paragraph (b); of this section;

(ii) Develop and submit for approval by DOE and QAP for the facility; and

(iii) Implement the QAP, as approved and modified by DOE.

(2) A subcontractor or a supplier of a contractor shall comply with the standards of quality set forth in the QAP.

(b) *Quality Assurance criteria*—(1) *Management*—(i) *Criterion 1—Program.* The contractor shall develop, implement, and maintain a written QAP. The QAP shall describe the organizational structure, functional responsibilities, levels of authority, and interfaces for those managing, performing, and assessing adequacy of work. The QAP shall describe the contractor's management system, including planning, scheduling, and cost-control considerations.

(ii) *Criterion 2—Personnel Training and Qualification.* Personnel shall be trained and qualified to ensure that they are capable of performing their assigned work. Personnel shall be provided continuing training to ensure that job proficiency is maintained.

(iii) *Criterion 3—Quality Improvement.* The contractor shall establish and implement processes to detect and prevent quality problems and to ensure quality improvement. Items and processes that do not meet established requirements shall be identified, controlled, and corrected. Correction shall include identifying the causes of problems and preventing recurrence. Item reliability, process implementation, and other quality-related information shall be reviewed and the data analyzed to identify items and processes needing improvement.

(iv) *Criterion 4—Documents and Records.* Documents shall be prepared, reviewed, approved, issued, used, and revised to prescribe processes, specify requirements, or establish design. Records shall be specified, prepared, reviewed, approved, and maintained.

(2) *Performance*—(i) *Criterion 5—Work Processes.* Work shall be performed to establish technical standards and administrative controls. Work shall be performed under controlled conditions using approved instructions, procedures, or other appropriate means. Items shall be identified and controlled to ensure their proper use. Items shall be maintained to prevent their damage, loss, or deterioration. Equipment used for process monitoring or data collection shall be calibrated and maintained.

(ii) *Criterion 6—Design.* Items and processes shall be designed using sound engineering/scientific principles and appropriate standards. Design work, including changes, shall incorporate applicable requirements and design bases. Design interfaces shall be identified and controlled. The adequacy of design products shall be verified or validated by individuals or groups other than those who performed the work. Verification and validation work shall be completed before approval and implementation of the design.

(iii) *Criterion 7—Procurement.* Procured items and services shall meet established requirements and perform as specified. Prospective suppliers shall be evaluated and selected on the basis of specified criteria. The contractor shall ensure that approved suppliers can continue to provide acceptable items and services.

(iv) *Criterion 8—Inspection and Acceptance Testing.* Inspection and acceptance testing of specified items and processes shall be conducted using established acceptance and performance criteria. Equipment used for inspections and tests shall be calibrated and maintained.

(3) *Assessment*—(i) *Criterion 9—Management Assessment.* Management at all levels shall periodically assess the integrated quality assurance program and its performance. Problems that hinder the organization from achieving its objectives shall be identified and corrected.

(ii) *Criterion 10—Independent Assessment.* Planned and periodic independent assessments shall be conducted to measure items quality and process effectiveness and to promote improvement. The organization performing independent assessments shall have sufficient authority and freedom from the line organization to carry out its responsibilities. Persons conducting independent assessments shall be technically qualified and knowledgeable in the areas assessed.

(c) *Quality Assurance Program.* (1) A contractor shall develop a QAP by applying the quality assurance criteria specified in paragraph (b) of this section. A QAP shall include a discussion of how the criteria of paragraph (b) of this section will be satisfied, taking into consideration the risk associated with the facility. The contractor shall use appropriate standards, wherever applicable, to develop and implement its QAP.

(2) A contractor shall obtain DOE approval of a QAP for a new facility prior to commencing work.

(3) A contractor of an existing facility shall ensure that the QAP for the facility meets the requirements of § 830.120 and shall submit the QAP, together with an implementation plan, to DOE for approval within 180 days after the effective date of this section. A QAP shall be regarded as approved by DOE 180 days after submittal, unless approved or rejected by DOE at an earlier date. A QAP shall include any modification made or directed by DOE.

(4) A contractor may, at any time, make changes to an approved QAP. Changes made over the previous year to an approved QAP shall be submitted annually to DOE for review. A change shall be regarded as approved by DOE 90 days after submittal, unless approved or rejected by DOE at an earlier date. A

QAP shall include any modification made or directed by DOE. A submittal shall identify the changes, the pages affected, the reason for the changes, and the basis for concluding that the revised program continues to satisfy the requirements of this section. Changes made to correct spelling, punctuation , or other editorial items do not require explanation.

§ 830.121 Software control. [Reserved]

§ 830.122 Defect identification and reporting.

(a) *General rule.* (1) A subcontractor or supplier to a contractor shall identify and report an actually or potentially defective item or service in accordance with the requirements of this section. A report shall contain sufficient information to permit a contractor to evaluate the impact of the defective item or service on a facility.

(2) The responsibility for identifying and reporting a defective item or service shall extend to all levels and individuals of a contractor, subcontractor, or supplier organization.

(3) A contractor shall ensure that its subcontractors and suppliers comply with this section.

(b) *Notification of DOE Contractors.* (1) A subcontractor or supplier shall notify a purchaser within 2 days after it identifies an actually or potentially defective item or service. If the first notification is by means other than in writing, a written report must be submitted within 5 working days.

(2) The notification shall include:

(i) Name and address of the person providing the notification;

(ii) Nature of the defect and any substantial safety hazard that could result, if known;

(iii) A description of the defective item or service, including specific information, such as:

(A) Its intended or actual applications, if known;

(B) Manufacturer's name;

(C) Item model numbers;

(D) Name and addresses of the original and any intermediate suppliers;

(E) Number of defective items; and

(F) Potential failure modes;

(iv) Identification of the facilities where the defective items and services has been supplied, to the extent known;

(v) Actions that have been taken or are being planned to correct the defective items or service, including designation of the organization responsible for implementing the corrective actions and the schedule for completion; and

(vi) Identification of the organization to whom notifications have or will be made as required by paragraph (b)(1) of this section.

§ 830.130 Human factors. [Reserved]

§ 830.131 Fitness for duty. [Reserved]

§ 830.132 Safety concern management. [Reserved]

§ 830.140 Decontamination and decommissioning. [Reserved]

Subpart B—Design

§ 830.200 Scope.

This subpart prescribes requirements that are principally applicable to the design of DOE nuclear facilities.

§ 830.210 Reactor design criteria. [Reserved]

§ 830.211 Non-reactor nuclear facility design criteria. [Reserved]

§ 830.212 Facility protection systems. [Reserved]

§ 830.213 Fire protection. [Reserved]

§ 830.214 Environmental qualification. [Reserved]

§ 830.215 Protection against extreme external phenomenon. [Reserved]

Subpart C—Operations

§ 830.300 Scope.

This subpart prescribes requirements that are principally applicable to the operation of DOE nuclear facilities.

§ 830.310 Conduct of operations at DOE nuclear facilities.

(a) A contractor responsible for the operation of a DOE nuclear facility shall:

(1) Establish and implement a program to control the conduct of operations at the facility;

(2) Prepare and submit to DOE a conduct of operations plan to document the requirements, standards, and procedures that constitute the conduct of operations program; and

(3) Comply with the conduct of operations plan, as approved and modified by DOE.

(b) A conduct of operations program shall address:

(1) Operations organization and administration;

(2) Shift routines and operating practices;

(3) Control area activities;

(4) Communications;

(5) Control of on-shift training;

(6) Investigation of abnormal events;

(7) Notifications;

(8) Control of equipment and system status;

(9) Lockout and tagout;

(10) Independent verification;

(11) Logkeeping;

(12) Operations turnover;

(13) Operations aspects of facility chemistry and unique processes;

(14) Required reading;

(15) Timely orders to operators;

(16) Operations procedures;

(17) Operator aid postings; and

(18) Equipment and piping labeling.

(c) A contractor shall use a graded approach in applying the elements in paragraph (b) of this section to operations under his cognizance.

(d) Within 6 months of the effective date of this section, a contractor of an existing facility shall submit a conduct of operations plan that:

(1) Describes the program to control the conduct of operations at the facility;

(2) Indicates how each element in paragraph (b) of this section is applied within the contractors requirements, standards, procedures, or other measures; and

(3) Documents the application of the graded approach in paragraph (c) of this section by identifying where and explaining why the program modifies or does not address an element in paragraph 9(b) of this section.

(e) Conduct of operations plans shall be considered approved 180 days after submittal, unless approved or rejected by DOE at an earlier date, and shall include any modifications made or directed by DOE.

(f) A change in a conduct of operations plan that reduces the level of compliance must be submitted to DOE and receive DOE approval prior to implementation.

(g) A contractor shall assess its implementation of a conduct of operations program and its effectiveness on facility operations through management observation and audit. A contractor shall assure that all deviations from the program are formally noted and corrected as required to comply with this section.

§ 830.320 Technical safety requirements.

(a) A contractor responsible for a DOE nuclear facility shall:

(1) Prepare the TSR for the facility;

(2) Submit the TSR to DOE for approval; and

(3) Operate the facility in accordance with the TSR as approved and modified by DOE;

(b) DOE may waive the application of this section in any situation where DOE determines, on the basis of the safety analysis for the facility, TSRs would not be appropriate.

(c) TSRs shall be based on the facility SAR and shall set forth specific limits

and other requirements as specified in this section.

(d) A TSR shall consist of the following:

(1) *Operating Limits (OLs).*—(i) *Safety Limits (SLs).* This section of the TSR shall contain the safety limits on the process variables. If a safety limit for a nuclear facility is exceeded, the nuclear facility shall be immediately placed in the most stable, safe condition attainable, including total shutdown, except where such action might reduce the margin of safety. If a safety limit for a nuclear reactor is exceeded, the reactor shall be shut down immediately. The safe, stable condition entered as corrective action shall be maintained until DOE authorizes further operations.

(ii) *Limiting Control Settings (LCSs).* This section of the TSR shall contain the settings for automatic alarms and for automatic or nonautomatic initiation of protective actions related to those variables having significant safety functions. The specific settings chosen must correct a situation automatically or manually such that the related SL is not exceeded. If an automatic alarm or protective device does not function as required during an applicable operating mode, the contractor shall take action as defined in the LCS to maintain the variables within the requirements and to repair the automatic device promptly or to shut down the affected part of the process and, if required, to shut down the facility.

(iii) *Limiting Conditions for Operation (LCOs).* This section of the TSR shall contain the limits on functional capability or performance level. If a limiting condition for operation is not met, the contractor shall take any remedial actions defined by the TSR until the condition can be met.

(2) *Surveillance Requirements (SRs).* This section of the TSR shall contain the surveillance requirements necessary to maintain operation of the facility within the SLs, LCSs, and LCOs. If a surveillance requirement is not successfully completed or accomplished within its required frequency, the systems or components involved shall be assumed to be inoperative and actions defined by limiting control setting or limiting condition for operation shall be taken until the systems or components can be shown to be operable.

(3) *Administrative Controls.* This section of the TSR shall contain the requirements associated with administrative controls, including those for reporting deviations from the TSR. Staffing requirements for facility positions important to safe operation of the facility shall be included in the administrative controls subsection of the TSR. Physical and administrative controls of the criticality safety program shall also be provided in this section.

(4) *Use and application.* This section of the TSR shall contain the basic instructions for using and applying the safety restrictions contained in the TSR. Definitions of terms, operating modes, frequency notations, and actions to be taken in the event of violations of OLs or SRs are to be included in this section.

(5) *Appendices.—(i) Bases.* This Appendix shall provide summary statements of the reasons for the OLs and associated SRs. The basis shall show how the numeric value, the condition, or the surveillance fufills the purpose derived from the safety documentation. The primary purpose for describing the basis of each requirement is to ensure that any future changes to the requirement will not affect its original intent or purpose.

(ii) *Design features.* This appendix shall describe passive design features of the facility that, if altered or modified, would have a significant effect on safe operation. If design features are in a DOE-approved SAR pursuant to this part, this appendix is not required.

(e) A TSR shall be kept current at all times so that it reflects the facility as it exists and as it is analyzed in the SAR. A contractor shall determine whether revisions to a TSR are required upon originating or revising a SAR, and, if so, shall prepare revisions and submit them with their bases for DOE approval concurrent with the revised SAR.

(f) All proposed revisions to a TSR shall be submitted for DOE approval prior to implementation of the revision. The submittal shall include the bases for the proposed revision.

(g) Only the current DOE-approved TSRs shall be used for the operation of the facility. The current DOE-approved TSRs shall be a controlled document.

(h) A contractor may take emergency actions that depart from approved TSRs when no actions consistent with the TSRs are immediately apparent, and when these actions are needed to protect the public health and safety. Such actions shall be approved, as a minimum, by a certified operator.

(i) A contractor shall submit TSRs to DOE for approval in accordance with the following schedules:

(1) For a new facility, the TSRs shall be approved by DOE before operation of the facility.

(2) For an existing facility (or a new facility expected to be operational within 6 months of the effective date of this section) that does not have approved Technical Specifications or Operational Safety Requirements, the TSRs shall be submitted for DOE approval within 6 months of the effective date of this section.

(3) For an existing facility that has DOE-approved Technical Specifications or Operational Safety Requirements, a review shall be conducted by the contractor to compare these documents with the provisions of this section.

(i) If the existing Technical Specifications or Operational Safety Requirements comply with the provisions of this section (except for format), the contractor shall submit a statement to DOE stipulating to that fact within 6 months of the effective date of this section. A copy of the existing documents shall accompany the statement. DOE shall review this statement for approval. The existing Technical Specifications or Operational Safety Requirements shall be converted to TSRs (i.e., reprinting, changing references in procedures, etc.) when revisions are made to the documents or, in any event, within 3 years after the effective date of this section. During the interim period until the revised TSRs are approved by DOE, the existing Technical Specifications or Operational Safety Requirements shall be treated as a DOE-approved TSR for purposes of this section.

(ii) If the existing Technical Specifications or Operational Safety Requirements do not comply with the provisions of this section, the contractor shall make the revisions necessary to bring the document into compliance with this section and shall submit the resulting TSR to DOE for review and approval within 6 months of the effective date of this section. Upon approval, the TSR shall replace the existing Technical Specifications or Operational Safety Requirements.

(4) TSRs shall be considered approved 180 days after its submittal to DOE, unless approved or rejected by DOE at an earlier date, and shall include any modifications made or directed by DOE.

§ 830.330 Training and certification.

(a) *General rule.* A contractor responsible for a DOE nuclear facility shall:

(1) Develop and implement the training programs required by this section;

(2) Evaluate and certify personnel as required by this section;

(3) Prepare and submit to DOE a training plan that sets forth its implementation of the training and certification requirements of this section; and

(4) Comply with the training plan for the facility as approved and modified by DOE.

(b) *Certified personnel.*—(1) *Training programs.* Initial and continuing training programs for personnel to be certified shall be developed and implemented to ensure they are qualified to perform job requirements. Training program content shall be designed based on an analysis of job duties derived from information in the SAR, system description manuals and operating procedures, TSRs, and lessons learned from occurrence reports. The program shall utilize a systematic approach to training that includes the following basic elements:

(i) Systematic analysis of the jobs to be performed;

(ii) Learning objectives derived from the analysis that describe desired performance after training;

(iii) Training design and implementation based on the learning objectives;

(iv) Evaluation of trainee mastery of the objectives during training; and

(v) Evaluation and revision of the training based on the performance of trained personnel in the job setting.

(2) *Initial training.* An initial training program shall be established in accordance with paragraph (b)(1) of this section to develop or enhance the knowledge, skills, and ability of certified operators (reactor operators and nuclear facility operators) and certified supervisors (senior reactor operators and nuclear facility supervisors) to perform job assignments. The program shall consist of a combination of clasroom and on-the-job training and shall include simulator and laboratory training for those facilities required to have simulators or which have laboratory facilities, as it applies to the position. Classroom training may include lectures, seminars, computer-based, and structured self-study training activities. The program shall include training on basic theory and fundamentals, principles of facility operation and operating characteristics, facility systems, and normal, abnormal, and emergency operating procedures.

(3) *Certification.* Reactor operators and senior reactor operators at DOE Category A and Category B reactor facilities and nuclear facility operators and nuclear facility supervisors at DOE non-reactor nuclear facilities shall be certified.

(i) The program leading to certification shall be governed by written procedures, which shall include requirements for documented assessment of the person's qualifications through examinations and operational evaluations.

(ii) Certification shall be valid for a period of 2 years, unless revoked for cause, at which time the certified individual shall be recertified in accordance with paragraph (b)(10) of this section.

(4) *Continuing training.* Continuing training programs shall be established in accordance with paragraph (b)(1) of this section to maintain and enhance the knowledge and proficiency of certified operators and certified supervisors. These programs shall:

(i) Be administered on a 2-year cycle and shall be followed by successive continuing training programs; and

(ii) Consist of preplanned classroom training, on-the-job training, and operational evaluations and shall include the following, at a minimum, as related to job performance:

(A) Training and examination covering abnormal procedures and emergencies at least annually;

(B) Training in significant facility system and component changes, applicable procedure changes, applicable industry and facility-specific operating experience, and selected fundamentals with emphasis on seldom-used knowledge and skills necessary to ensure nuclear safety;

(C) Training drills conducted in the nuclear facility to enable personnel and operating teams to respond to abnormal or accident situations;

(D) Instruction in the use of facility systems to control or mitigate accidents, including both classroom and on-the-job training conducted in the facility; and

(E) training in the following subjects, as applicable to the position, whenever examinations and experience (industry and nuclear facility-specific) or other evidence indicates a need for emphasis:

(*1*) Theory and principles of nuclear facility operation;

(*2*) General and specific facility operating characteristics;

(*3*) Facility instrumentation and control;

(*4*) Facility protection systems;

(*5*) Engineered safety features;

(*6*) Normal, abnormal, and emergency operating procedures;

(*7*) Radiation control and safety; and

(*8*) TSRs.

(5) *Written examinations and operational evaluations.* (i) Written examinations and operational evaluations shall be prepared and administered to demonstrate that the knowledge, skills, and abilities of certified operators and certified supervisors are satisfactory. Written examinations shall contain a representative selection of questions derived in accordance with paragraph (b)(1) of this section. Operational evaluations, to the extent applicable to the facility, shall require the candidate to demonstrate an understanding of, and the ability to perform the actions necessary to operate the facility safely. Operational evaluations shall contain questions and operational exercises, and may include system and/or component operations. Operational evaluations shall include a walkthrough or a combination walkthrough and simulator examination (for those DOE facilities having simulators).

(ii) Written procedures for development, approval, security, administration, and maintenance of examinations and operational evaluations shall be established.

(iii) Candidates for initial certification or recertification shall not engage in any activity that compromises the integrity of any examination or operational evaluation required by this section.

(6) *Simulator requirements.* DOE production reactors shall have a full-scope simulator for reactor operator and senior reactor operator training. If a full-scope simulator is to be utilized for more than one production reactor, the differences between the simulator and each reactor shall be identified and documented by the contractor and approved by the Department. At DOE Category A test and research reactors, an evaluation of the need for a full-scope or partial-task simulator shall be conducted.

(7) *Control manipulations.* A contractor shall establish a list of control manipulations important to the safe operation of the nuclear facility that shall be performed by certified operators and certified supervisors. The list shall be based on duties required by normal, abnormal, and emergency operating procedures. Certified supervisors need only direct control manipulations to meet this requirement; however, at Category A and Category B reactor facilities, senior reactor operator candidates shall perform control manipulations as part of initial certification.

(8) *Operator proficiency requirements.* Certified operators and certified supervisors shall actively participate in certification duties to maintain an active certification status. Procedures to define requirements and frequency necessary to maintain an active status shall be established.

(9) *Medical requirements.* A candidate for certification shall receive an initial medical examination by a physician and shall be reexamined at least every 2 years to verify health and physical fitness to perform assigned tasks safely. The contractor shall

establish written procedures to control the administration of medical examinations for certified personnel.

(10) *Recertification.* At the conclusion of the 2-year continuing training program, certified personnel who will continue to perform duties requiring certification shall be required to recertify. Recertification shall be based on a determination that:

(i) The candidate has performed certification duties competently and safely during the past certification period;

(ii) The candidate has a current medical examination as required by paragraph (b)(9) of this section;

(iii) The candidate is capable of continuing to assume certification duties competently and safely;

(iv) The candidate has successfully completed the continuing training program as required by paragraph (b)(4) of this section, and

(v) The candidate has passed a comprehensive recertification written examination and operational evaluation, as applicable to the position.

(11) *Records.* Training records shall be maintained pursuant to administrative procedures included in the training program required by this section. Documents related to initial certification and the most recent certification shall be retained in individual records.

(c) *Exclusions.* Certification is not required by this section for an individual who—

(1) Under the direction and in the presence of a certified operator or certified supervisor, manipulates the controls of:

(i) A nuclear facility as part of the individual's training as a student; or

(ii) A nuclear facility as part of the individual's training in a facility's training program as approved by DOE to qualify for operator or supervisor certification under this section.

(2) In the presence and under the direction of a certified senior reactor operator, manipulates the controls of a reactor facility to load or unload the fuel into, out of, or within the reactor vessel.

(d) *Non-certified personnel.* Training and qualification programs for personnel who are not required to be certified (auxiliary operations personnel, maintenance personnel, and technical support staff personnel) shall be established and described in the SAR for the nuclear facility and the training plan required by paragraph (e) of this section. These programs shall be developed utilizing a systematic approach to training.

(e) *Training plan.* (1) A training plan shall include:

(i) Descriptions of initial and continuing training programs including the certification and recertification process;

(ii) The results of the evaluation required by paragraph (b)(6) of this section for Category A reactors not specifically required to have a simulator;

(iii) Descriptions of training and qualification programs for personnel in addition to the personnel required to be certified in accordance with this section;

(iv) The list of control manipulations; and

(v) Procedures for—

(A) Examination and operational evaluation development, approval, security, administration, and maintenance;

(B) Recordkeeping requirements;

(C) Administration of medical requirements;

(D) Reinstatement of certification; and

(E) Maintaining operator proficiency.

(2) A training plan for an existing facility shall be submitted for approval within 6 months of the effective date of this section. A training plan shall be considered approved 180 days after submittal, unless approved or rejected by DOE at an earlier date. A training plan shall include any modification made or directed by DOE.

(3) Where a contractor has more than one nuclear facility at a given site, a consolidated plan may be utilized if the facility differences can be effectively accommodated.

(4) A contractor shall submit to DOE changes to an approved program. Changes that reduce the commitments in the plan must receive DOE approval prior to implementation.

§ 830.340 Maintenance management.

(a) *General rule.* A Contractor responsible for a DOE nuclear facility shall:

(1) Develop, implement, and conduct operations at a facility in accordance with the maintenance program for the facility;

(2) Prepare and submit to DOE a Maintenance Implementation Plan (MIP); and

(3) Comply with the MIP, as approved and modified by DOE.

(b) *Maintenance program.* (1) A maintenance program for a DOE nuclear facility shall contain provisions sufficient to preserve, predict, or restore the availability, operability, and reliability of plant structures, systems, and components important to safe and reliable operation of the nuclear facility.

(2) A maintenance program shall clearly define:

(i) The structures, systems, and components that comprise the nuclear facility;

(ii) The requirements of the maintenance program that are derived from the elements described in paragraph (b)(3) of this section using the graded approach described in paragraph (c) of this section;

(iii) The management systems used to control those activities, including the means for monitoring and measuring the effectiveness of the program and the management of maintenance backlog;

(iv) The assignment of responsibilities and authority for all levels of the maintenance organization;

(v) Mechanisms to feedback such relevant information as trend analysis and instrumentation performance/reliability data in order to identify necessary program modifications;

(vi) Provisions for identification and evaluation of possible component, system design, occupational safety and health, or other relevant problems;

(vii) Performance indicators and criteria to be utilized to measure equipment, systems, and personnel effectiveness in maintenance activities; and

(viii) Interfaces between maintenance and other organizations (e.g., involving operations, engineering, quality, and safety).

(3) A maintenance program shall address each of the following elements:

(i) Organization and administration;

(ii) Maintenance training and qualification;

(iii) Maintenance facilities, equipment, and tools;

(iv) Types of maintenance;

(v) Maintenance procedures and other work-related documents;

(vi) Planning, scheduling, and coordinating maintenance activities;

(vii) Management involvement in control of maintenance activities;

(viii) Postmaintenance testing;

(ix) Procurement of parts, materials, and services;

(x) Material receipt, inspection, handling, storage, retrieving, and issuance;

(xi) Control and calibration of measuring and test equipment;

(xii) Maintenance tools and equipment control;

(xiii) Facility condition inspections;

(xiv) Management involvement with facility operations;

(xv) Maintenance history and trending;

(xvi) Analysis of maintenance-related problems; and

(xvii) Modification work.

(4) A maintenance program shall provide for periodic inspections of structures, systems, and components important to the safe operation of DOE nuclear facilities shall be performed to determine whether deterioration is taking place and to identify and address aging effects that threaten safety and performance.

(c) *Graded approach.* A graded approach shall be used in the development and implementation of DOE nuclear facility maintenance programs. The structures, systems, and components to be maintained, the types of maintenance to be conducted, and the frequency of those maintenance actions shall be determined by a systematic analysis acceptable to DOE.

(d) *Maintenance Implementation Plan.*

(1) A contractor shall prepare a MIP to document the maintenance program for a nuclear facility. Where a contractor has more than one nuclear facility at a given site, a consolidated plan may be utilized when facility differences can be effectively accommodated.

(2) A contractor of an existing facility shall submit a MIP within 12 months after the effective date of this section. A MIP or a change or update thereto shall be considered approved 180 days after submittal, unless approved or rejected by DOE at an earlier date. A MIP shall include any modification made or directed by DOE.

§ 830.341 Material condition and aging. [Reserved]

§ 830.350 Categorization, notification, reporting, and processing of operational occurrences at DOE nuclear facilities.

(a) *General requirements.* A contractor responsible for a DOE nuclear facility shall:

(1) Categorize operational occurrences at the facility;

(2) Prepare and submit, to DOE, procedures concerning the categorization, notification, and reporting required by this section;

(3) Comply with the procedures, as approved and modified by DOE;

(4) Develop and implement lessons learned from the operating experience information generated by this section; and

(5) Designate a facility manager to categorize, notify, and report to the responsible DOE Facility Representative and Program Manager, each reportable occurrence.

(b) *Categorization.* (1) A facility manager shall categorize a reportable occurrence as soon as reasonably possible and in all cases within 2 hours of discovery of the event or condition. If categorization is not clear, the occurrence shall be conservatively categorized at the higher level being considered. The occurrence categorization shall be elevated, maintained, or lowered, as appropriate, as further information is obtained.

(2) Emergencies. Emergencies are the category of the most serious reportable occurrences and include:

(i) Any unintentional nuclear criticality that results or could result in actual or potential facility damage or release of radioactive material to the environment;

(ii) Any actual or potential release of radioactive material to the environment that results or could result in significant off-site consequences;

(iii) Any natural or man-made occurrence that poses an actual or potential threat to the structural integrity of a DOE nuclear facility and that results or could result in significant off-site consequences;

(iv) Any occurrence that involves an actual or potential significant degradation of the level of safety of a DOE nuclear facility that results or could result in significant off-site consequences;

(v) Any safeguards or security occurrence that is an actual or potential threat to DOE operations, facilities, or personnel and that results or could result in significant effects on the public health and safety and/or on national security; and

(vi) Any occurrence that requires activation of the site emergency plan.

(3) Unusual Occurrences. Unusual Occurrences are the category of nonemergency reportable occurrences that have significant impact or potential for impact on safety, the environment, health, safeguards and security, or operations and include:

(i) The actual or potential release of radioactive materials to the environment that results or could result in significant on-site consequences;

(ii) The release of radioactive materials above limits established in, or in violation of, safety, environmental, or health requirements defined in Federal permits, Federal regulations, or DOE standards;

(iii) Significant internal or external threats (including, but not limited to, safeguards and security) to safety, environmental or health protection, to the protection of nuclear or special nuclear material, or to the ability of a DOE nuclear facility to operate;

(iv) Significant degradation of safety systems, structures, or components necessary to fulfill safety functions, or of environmental, safety, or health conditions;

(v) Any fatality resulting from an occurrence;

(vi) Significant exposure to radioactive materials, or significant off-site or on-site contamination;

(vii) Failure of environmental monitoring equipment that results in the inability to demonstrate compliance with applicable regulations;

(viii) Failure of safety systems, structures, or components necessary to fulfill safety functions;

(ix) Failure or significant degradation of administrative controls which are required to ensure safety, environment, or health protection;

(x) Any occurrence that results in an unanticipated significant delay in achieving programmatic objectives or a significant increase in cost of operations;

(xi) The actuation of emergency systems or engineered safety features, except as required for an approved test procedure;

(xii) Violation of TSRs;

(xiii) The identification of information that indicates a potential inadequacy of previous safety analyses or a possible reduction of safety margins (including information that indicates that the facility may be operating outside its authorization basis or in an unanalyzed condition);

(xiv) Identification of an Unreviewed Safety Question; and

(xv) Violation of DOE safety or environmental requirements or the loss of control or release of radioactive material above allowable limits.

(4) Off-Normal Occurrences. Off-Normal Occurrences are the category of abnormal or unplanned reportable occurrences that adversely affect, potentially affect, or are indicative of degradation in the level of safety, safeguards and security, environmental, or health protection performance or operation of a DOE nuclear facility and include:

(i) Occurrences that result in the release of radioactive materials below limits established by Federal permits, Federal regulations, or DOE standards but that must be reported to state or local agencies;

(ii) Internal or external threats (including, but not limited to safeguards and security) to safety, to environmental or health protection, or to the ability of a DOE nuclear facility to operate;

(iii) Degradation of environmental, safety, or health conditions;

(iv) Serious personnel injury or significant lost workday cases, personnel contamination, assimilation, exposure, or significant on-site or off-site contamination of radioactive

materials in excess of administrative limits but within regulatory limits;

(v) Discovery of a condition that could prevent the functioning of systems, structures, components, or administrative controls necessary to ensure safety, health, or environmental protection. Reporting is required regardless of whether the system, structure, components, or administrative control was required to be operable at the time of the discovery;

(vi) The degradation of environmental monitoring equipment that, if failed, would result in the inability to demonstrate compliance with applicable regulations;

(vii) The violation of safety, environmental, or health administrative limits;

(viii) Operational procedural violations, including maintenance and administrative procedures having the potential to impact the safety, security, environmental, or health performance or operation of a DOE nuclear facility; and

(ix) The identification, by contractors, subcontractors or suppliers, of an actual or potentially defective item or service.

(c) *Notification.*—(1) *Oral Notification.* A facility manager shall provide DOE with oral notification of occurrences categorized as Emergencies and Unusual Occurrences. In such cases, the facility manager shall simultaneously contact the DOE Facility Representative and the DOE Program Manager via the Headquarters Emergency Operations Center:

(i) Within 15 minutes of categorization of an occurrence as an Emergency; or

(ii) As soon as practical and in all cases within 2 hours of categorization of an occurrence as an Unusual Occurrence.

(2) *Follow-up Notification.* A facility manager shall provide follow-up oral notification to the DOE Facility Representative and the DOE Program Manager simultaneously via the Headquarters Emergency Operations Center within 2 hours of any of the following conditions:

(i) The identification of further degradation in the level of safety of the facility or other worsening conditions;

(ii) A change from one emergency action level or category to another; or

(iii) Termination of an emergency.

(3) *Documented notification.* A facility manager shall provide documented notification of all reportable occurrences to the DOE Facility Representative and the DOE Program Manager within 24 hours of categorization of the occurrence. The notification shall include the information specified in paragraphs (d)(4)(i) through (d)(4)(ix) of this section.

(d) *Occurrence Report.*(1) A facility manager shall prepare and submit an Occurrence Report to the DOE Facility Representative and the DOE Program Manager within 10 working days of categorization of an occurrence. To the extent possible at that time, the report shall include all of the content requirements of paragraph (d)(4) of this section.

(2) An Occurrence Report shall be updated when significant new information is available.

(3) Completion of the final Occurrence Report is required when the analysis of the occurrence has been completed, root cause(s) and contributing cause(s) finalized, corrective action(s) determined and scheduled, and lessons learned identified. The final Occurrence Report shall be submitted to the DOE Facility Representative within 45 days of categorization of the occurrence and shall include all of the content requirements of paragraph (d)(4) of this section. If the required analysis cannot be completed within 45 days, an update to the 10-day Occurrence Report shall be submitted within 45 days and shall include a detailed explanation of the delay and an estimated date for submittal of the Final Occurrence Report.

(4) The Occurrence Report shall contain, at a minimum, the following information about each reportable occurrence involving each DOE nuclear facility:

(i) An alphanumeric occurrence report number identifying the DOE field office, area office (if applicable), the DOE contractor or laboratory involved, the facility, the year of the occurrence, and the sequential number of the occurrence;

(ii) Category of the occurrence;

(iii) DOE contractor and DOE program office responsible for the facility involved;

(iv) All system(s), equipment, structural items, administrative controls, or procedures involved in the occurrence, including information related to manufacturers, types, models numbers, and procedure numbers;

(v) Date and time when the occurrence was identified and categorized;

(vi) Date and time of notification of DOE and state and local authorities;

(vii) A thorough and complete description of what occurred, including a sequence of events and a description of failures, so that DOE and contractor personnel, not familiar with the facility-specific design features or administrative controls employed, can understand the complete occurrence;

(viii) Operational status of the facility or equipment at the time of the occurrence, including the status of systems, structures, or components that were inoperable at the start of the event and that contributed to the event;

(ix) Immediate or remedial actions taken to place the facility, system, or equipment in a safe, stable condition, to return them to service, or to correct or alleviate the anomalous condition, and the results of those actions;

(x) Cause of the occurrence, including direct and contributing causes and the root cause;

(xi) Recommendations about whether further evaluation is required and, if so, before or after returning the facility to operation;

(xii) Action taken or planned to correct the problem and the identified cause and to prevent recurrence;

(xiii) Impact of the occurrence on the environment, health and safety of workers, the public, and on-site and off-site environs (including quantities of radioactive materials released);

(xiv) Levels of contamination, human exposures, and known or projected health impacts;

(xv) Impact of the occurrence on the affected DOE program and/or project;

(xvi) Impact of the occurrence on the adequacy of national codes and standards and DOE requirements;

(xvii) Lessons learned from the occurrence that could be of importance to other DOE facility contractors or that shall be addressed in personnel training or DOE facility procedures;

(xviii) Any previous similar events at the same DOE facility that are known to the DOE contractor; and

(xix) The name and telephone number of a person within the DOE contractor's organization who is knowledgeable about the occurrence.

(e) Procedures. A contractor shall develop, implement, and comply with procedures to carry out the requirements of this section for a DOE facility. Procedures for an existing DOE facility shall be submitted to DOE within 6 months of the effective date of this section.

(f) *Distribution.* A contractor shall send the notification report and occurrence reports (10-day and final) to the DOE Facility Representative and the DOE Program Manager.

(g) *Operational Data Base.* The documentation and distribution requirements of this section shall be satisfied by utilization of the centralized DOE operational data base, the Occurrence Reporting and Processing System (ORPS).

§ 830.351 Performance indicators. [Reserved]

§ 830.360 Criticality safety. [Reserved]

§ 830.370 Emergency preparedness. [Reserved]

Subpart D—Material Management

§ 830.400 Scope.

This subpart prescribes requirements that are principally applicable to the control of byproduct, source, and special nuclear materials.

§ 830.410 Packaging for transport. [Reserved]

§ 830.420 Transportation. [Reserved]

§ 830.430 Disposal. [Reserved]

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Part IV

Department of Energy

10 CFR Part 835
Radiation Protection for Occupational Workers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 835

[Docket No. EH-RM-91-835]

Radiation Protection for Occupational Workers

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) is proposing primary standards for Radiation Protection for Occupational Workers. This proposed rule would be applicable to the control of radiation exposures to occupational workers from normal operations under the control of DOE and DOE contractor personnel.

DATES: The comment period for this proposed rule expires February 7, 1992. A hearing will be held at 9 a.m. in the U.S. DOE Germantown Auditorium, 19901 Germantown Road, (Route 118) Germantown, MD 20874 on January 16, 1992. Requests to speak at the hearing must be submitted to the address indicated in the ADDRESSES section of this notice and received by DOE by January 8, 1992.

ADDRESSES: Submit written comments (20 copies) and requests to speak to: R. Thomas Bell, Office of Health, EH-40, room G141, Docket No. EH-RM-91-835, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 903-3889.

Comments received may be examined at the DOE Freedom of Information Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:
Anthony A. Weadock, U.S. Department of Energy, Office of Health, EH-41, 19901 Germantown Road, Germantown, MD 20874, (301) 903-3496 or FTS 233-3496 or
Ben McRae, U.S. Department of Energy, Office of General Counsel, GC-31-FORS, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6975 or FTS 896-6975

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I. Background

DOE's policy has been to implement the Radiation Protection Guidance to Federal Agencies for Occupational Exposure issued by the President as well as legally applicable radiation protection standards and to consider and adopt, as appropriate, recommendations by authoritative organizations, e.g., the National Council on Radiation Protection and Measurements (NCRP) and the International Commission on Radiological Protection (ICRP). The proposed rules in this Notice are intended to continue this policy to ensure DOE facilities are operated in a manner such that radiation doses to occupational workers are maintained within acceptable limits and that radiation exposures are maintained as far below these limits as is reasonably achievable.

To achieve this goal, the proposed rule covers the following basic areas relating to occupational radiation protection:

(1) The proposed rule would codify current DOE limits on the maximum radiation doses that any worker may receive during a year. It would provide additional protection for the worker population by requiring that individual doses be maintained as far below the limits as is reasonably achievable. Because of DOE current practice the average annual radiation dose among DOE workers is typically only 3 percent of the limit for the whole body. Measurements would be required of the dose received from radiation sources external to the body as well as from radioactive material deposited in the body. Special protection would be required in the case of prenatal exposure.

(2) All dose measurements would be required to be recorded and reported to the DOE. A dose report would be sent to each worker every year.

(3) All workers at DOE facilities would receive general employee training about radiological safety. Those who might receive occupational exposures would be required to be trained extensively regarding methods of radiation protection before work involving radiation exposure begins.

(4) The proposed rule would establish comprehensive requirements for measurements in the workplace to assure that safe conditions were maintained, and strict controls were established over entry into areas where work involving potential radiation exposure was performed. Automatic alarm systems would be required to alert workers if abnormal conditions arise.

The effectiveness of the current DOE occupational radiation protection program may be evaluated objectively through examination of exposure data published in the open literature. For example average whole-body exposures among DOE workers whose doses are large enough to be measured are now about 3 percent of the DOE limit.

The overall objective of the DOE in proposing this rule is to codify existing DOE radiation protection directives. In addition, the provisions of this rule would be DOE nuclear safety requirements that, if violated, would provide a basis for the assessment of civil and criminal penalties under the Price-Anderson Amendments Act (PAAA), of 1988, Public Law 100-408, August 20, 1988.

II. Discussion

A. The Regulatory Standards Process

Government agencies such as the Department of Energy establish basic radiation protection standards that are consistent with guidance to Federal agencies issued by the President. This guidance, prepared by interagency committees under the leadership of the Environmental Protection Agency (EPA), is normally consistent with recommendations published by the International Commission on Radiological Protection (ICRP) and the National Council on Radiation Protection and Measurements (NCRP). In the preparation of their reports, the ICRP and NCRP scientific committees rely heavily on information published by the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) and other public information. The UNSCEAR reports

contain detailed radiobiological and epidemiological information that has been acquired on a worldwide basis. Through this system, U.S. Federal agencies maintain consistency in their basic standards and an international consensus of scientific opinion is assured. The standards promulgated by a number of Federal agencies are published in the **Federal Register** to solicit public comment prior to issuance in final form; that procedures is currently being employed by the Department of Energy for this rule, which is based on guidance to Federal agencies approved by the President on January 20, 1987.[1]

B. ICRP Methodology

The purpose of this section is to provide a brief, explanation of the ICRP methodology [2] on which Presidential guidance, current DOE radiation protection standards (DOE 5480.11), and this proposed rule are based. This methodology recognizes two basic types of radiation-induced health effects—nonstochastic and stochastic. Nonstochastic effects are normally not manifested unless a threshold dose is exceeded; therefore, the objective is to prevent these effects. The effects become more severe as the dose becomes larger. Cancer and hereditary effects are considered to be stochastic (probabilistic) in nature, and the objective is to limit the probability of these effects to acceptable levels. For stochastic effects, the severity is not dose dependent—that is, once caused, a malignancy from 100 rem is no worse than one from 50 rem. The Department currently accepts the assumption used by authoritative national and international organizations such as the NCRP and ICRP in the formulation of their recommendations for radiation protection standards that there are no thresholds for stochastic effects.

1. Nonstochastic Effects

Technical justification for the ICRP position on nonstochastic effects is presented in ICRP Publication 41.[3] According to this position, nonstochastic effects, with the exception of cataracts of the eye, will not occur among adults if the dose equivalent from external and internal radiation combined, to any organ or tissue, is limited to 50 rem or less in a year. (In ICRP terminology, the words organ and tissue are used together to designate the entire body.) To be consistent with ICRP recommendations, it is necessary during any given year to ensure that the organ or tissue receiving the highest dose equivalent does not exceed this limit.

Since the issuance of ICRP Publication 26, nonstochastic effects have had a highly significant role in the development of occupational regulatory standards that govern the inhalation of radioactive materials. The protection of every organ/tissue, with four exceptions, is based on nonstochastic effects. The exceptions are the lung, bone marrow, female breast, and gonads; for these organs, the limiting consideration is the possibility of cancer or genetic effects. For all other organs and tissues, the limiting consideration is the prevention of nonstochastic effects; that is, radionuclide intakes during a year are limited to an amount that would deliver a dose of 50 rem or less to any organ or tissue of the body, even though a larger dose would meet the criteria for controlling stochastic effects.

2. Stochastic Effects

For these effects, ICRP Publication 26 adopted the risk associated with 5 rem in a year, delivered to every susceptible organ from external and/or internal radiation sources, as the basis for the occupational dose-limitation system. The risk of excess fatalities and serious genetic effects as established in ICRP Publication 26 is 1.65×10^{-4} per person-rem. The stochastic annual limit on intake (ALI) for each radionuclide is the quantity that, if inhaled, would cause the same stochastic risk as a uniform, whole body dose of 5 rem in a year. If a worker is exposed to several airborne nuclides, so that an ALI for the mixture is applicable, inhalation of this ALI would result in the same risk.

In ICRP Publication 26, the absorbed dose and dose equivalent quantities are used as in previous ICRP publications. The new quantities and terminology introduced by the ICRP to facilitate implementation of the ICRP recommendations is explained below. Although all organs and tissues receive the same dose equivalent under uniform exposure conditions, the cancer risks are often not the same. Each organ or tissue contributes its own fraction of the risk. This fraction is called the weighting factor, and the sum of the weighting factors is unity. The product of the weighting factor and the dose equivalent is a quantity referred to as the effective dose equivalent (EDE). If the EDE is received in 1 year, this quantity is referred to as the annual effective dose equivalent (AEDE). These quantities are used for both external and internal irradiation and may be used for individual organs and tissues or for the sum over all organs and tissues. The unit used for either quantity is the same as for the dose equivalent—namely, the rem (or sievert). In the unique case of uniform irradiation of all organs and tissues, the sum of their effective dose equivalents is by definition equal to the whole body dose equivalent. The sum of the effective dose equivalents from external and internal sources is not allowed to exceed 5 rem in a year.

The committed dose equivalent (CDE) is the quantity defined as the 50-year integrated dose equivalent to a specific organ or tissue from the uptake of a radionuclide. The committed effective dose equivalent (CEDE) is the same quantity as the committed dose equivalent, with the exception that in the case of the committed effective dose equivalent, each organ or tissue dose equivalent is multiplied by a weighting factor. If more than one organ or tissue is irradiated, the effective dose equivalent for the exposed person is the sum of the effective dose equivalents to the individual organs and tissues. The rem (or sievert) is the unit of measurement for both of these quantities. These quantities are utilized in this proposed rule, alone or in combination, to establish regulatory requirements.

C. Limiting Values for Radiation Exposure

Previous and current the directives present numerical limiting values for a variety of circumstances involving potential exposure to radiation and radioactive materials. As proposed, this rule would adopt the same numerical limiting values summarized in Table I. The proposed rule reaffirms the Department's position that these standards are adequate.

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[1] "Radiation Protection Guidance to the Federal Agencies for Occupational Exposure." **Federal Register**, Vol. 52, No. 17, 1987

[2] International Commission on Radiological Protection. Recommendations of the International Commission on Radiological Protection: ICRP Publication 26, Annals of the ICRP 1, (3), Pergamon Press, New York, 1977.

[3] International Commission on Radiological Protection. Nonstochastic Effects of Ionizing Radiation: ICRP Publication 41, Volume 14, No. 3. Pergamon Press, New York, 1983.

TABLE I.—NUMERICAL LIMITING VALUES IN 10 CFR PART 835

Part 835	5480.11	Type of exposure	Limit
§ 835.202	9b(1)	Stochastic Effects	5 rem AEDE.
§ 835.202	9b(2)	Nonstochastic Effect: Lens of the eye	15 rem ADE.
		Nonstochastic Effects: extremity, skin area >100 square centimeters (cm^2), and organ or tissue other than lens of the eye.	50 rem ADE.
§ 835.204	9c	Planned Special Exposure	5 rem AEDE additional.
§ 835.205	9f(2)	Nonuniform Exposure of Skin: irradiated area >10 cm^2 but <100 cm^2; nonuniform plus uniform.	50 rem per yr, determined as f times the average DE to max exposed cm^2; f is total irradiated area (cm^2) divided by 100 cm^2.
§ 835.206	9b(3)	Unborn Child	0.5 rem ADE.
§ 835.207	9d	Minors/Students	0.1 rem per yr, CEDE + EDE external.
§ 835.208	9e	Public Entering a Controlled Areas	0.1 rem per yr, CEDE + ADE.
		DE to Any Tissue (Public)	5 rem per yr, DE.
§ 835.209	9f(4)(b)	Water Concentration	§ 834.103 values.
§ 835.404	9g(4)	Workplace Contamination Outside Radiological Areas	Appendix D values.

Note:
DE=dose equivalent [absorbed dose × quality factor].
EDE= effective does equivalent [sum of organ DEs, each multiplied by the weighting (sensitivity) factor for the organ].
ADE=annual dose equvalent.
AEDE=annual effective dose equivalent.
CEDE=committed effective dose equivalent [sum of organ DEs integrated over 50 years, each multiplied by the weighting (sensitivity) factor for the organ].

1. Protection Against Stochastic Effects

(a) *Atomic bomb survivor study.* Two developments in the atomic bomb survivor study have caused an increase in radiation risk estimates for cancer. First, a reassessment of the radiation doses received by the survivors, initiated by DOE in 1981, indicated that any gamma-radiation-induced malignancies at Nagasaki had been caused by less radiation than previously believed.[4] However, the opposite effect was observed among the Hiroshima survivors. The new dose estimates include more structural shielding as well as shielding by tissues overlying the affected organs. The overall impact of the revised dosimetry was summarized by Dr. Warren Sinclair, NCRP President, as follows: [5]

> Many of the changes made in the dosimetry tend to cancel so that the net effect of the dosimetry on the risk estimates for cancer is to increase them by a factor of between 1 and 2 depending on the location of the organ in the body.

The second (and more important) consideration was the occurrence of a larger number of deaths from solid tumors among survivors than had been anticipated.[6]

(b) *DOE response.* These findings have been analyzed in reports published by the United Nations Scientific Committee on the Effects of Atomic Radiation and the National Research/Council National Academy of Sciences Committee on the Biological Effects of Ionizing Radiation (BEIR V Committee). After publication of the Beir V Report, DOE established an external and independent Technical Review Committee (TRC) to perform a scientific assessment and an Internal Review Committee (IRC) to identify findings that could affect current DOE Orders and operations. The TRC recommended no immediate change in current DOE directives,[7] concluding that there may be no significant differences between the cancer risk estimates published in BEIR V and in its predecessor, BEIR III[8] The IRC subsequently concluded that the increased risk cited in the BEIR V Report dose not justify immediate revisions of the DOE occupational does limits, but that greater emphasis should be placed on the As Low As Reasonably Achievable (ALARA) concept.[9]

This emphasis presently involves (but is not limited to) the establishment of a DOE ALARA Committee, consisting of upper level representation from the operations offices as well as cognizant Headquarters program offices. The purposes of this committee include the following:

Periodic review and relevant recommendations based on exposure statistics; and

Assurance that a high level of attention and appropriate resources are directed toward achieving a progressive series of radiation exposure reductions throughout the DOE complex.

ALARA engineering reviews at facilities with significant collective exposures are also planned.

(c) *Occupational dose data.* All DOE contractors are required to submit occupational radiation exposure records to a central DOE repository. The results are published in annual DOE reports. The most recent report provides 1987 data for 81,028 DOE and contractor employees combined.[10] Of these workers, 57.4 percent received a whole-body dose equivalent that was less than measurable, 40.7 percent received a measurable dose equivalent less than 1 rem, and 1.9 percent received a dose equivalent greater than 1 rem. No employee received a dose equivalent greater than 4 rem. The average dose equivalent for all individuals reported to have received a measurable exposure was 159 mrem. These doses are far below the 5-rem annual limit, but further reductions for certain individuals could be achieved through greater emphasis on ALARA implementation.

(d) *Dose-reduction alternatives.* The following alternatives to greater ALARA emphasis have been considered by the Department in connection with the current proposed rulemaking action:

(1) Lowering annual dose limits that control stochastic effects.—This alternative would limit operational flexibility but would not necessarily reduce the overall radiation risk. A lower dose limit would affect very few

[4] National Research Council, Advisory Committee on the Radiation Effects Research Foundation. An Assessment of the New Dosimetry for A-Bomb Survivors. Washington, DC: National Academy of Sciences, 1987.

[5] United States Nuclear Regulatory Commission. Workshop on Rules for Exemption from Regulatory Control, NUREG/CP-0101, 1989.

[6] Radiation Effects Research Foundation. Comparison of Risk Coefficients for Site-Specific Cancer Mortality Based on the DS86 and T65R Shielded Kerma and Organ Doses. Life Span Study Report II, Part I, RERF TR 12-87, 1987.

[7] DOE Technical Review Committee. "A Technical Review and Assessment of the BEIR V Report." DOE/EH-0149T. March 1990.

[8] National Research Council, Advisory Committee on the Biological Effects of Ionizing Radiation. The Effects on Populations of Exposure to Low Levels of Ionizing Radiation. 1980 BEIR III. Washington, DC: National Academy of Sciences, 1980.

[9] Assistant Secretary for the Environment, Safety, and Health. "Final Report to the Secretary of Energy, Implications of the BEIR Report to the Department of Energy " DOE/EH-0158T. August 1990.

[10] Assistant Secretary for Environment, Safety, and Health. "Twentieth Annual Report/Radiation Exposures for DOE and DOE Contractor Employees—1987." DOE/EH-0128. October 1989.

individuals and would not appreciably reduce the collective dose (person-rem) to occupationally exposed personnel. An annual dose limit sufficiently low to affect a preponderance of this population could introduce inefficiencies that would increase the collective dose.

(2) Adopting the NCRP lifetime dose limit to control such effects.—This alternative was recommended in NCRP Report 91, which states that a worker's lifetime occupational dose in rem should not exceed his or her age in years.[11] The alternative was considered during the development of the Department's current standards but was not used. Lifetime doses among the DOE work force are, in general, far below this limit—so much so that a lifetime dose limit is not considered to be necessary. A lifetime limit would offer little, if any, additional protection and would not achieve the dose-reduction objective under consideration.

(3) Adding to the present stochastic dose limit a requirement that maintains the average annual individual whole body dose at a level of 2 rem or less.—On June 22, 1990, the ICRP issued a press release announcing its decision to recommend an occupational dose limit that was similar to this alternative. Thus, it is anticipated that the alternative will be incorporated into the forthcoming major revision of recommendations that were published in ICRP Publication 26. It is anticipated that the revised recommendations will be considered by an interagency committee organized by the Environmental Protection Agency (EPA) to revise the current Presidential guidance to Federal agencies. Given these circumstances, it would be premature to propose this alternative.

(4) Proposed DOE position.—In contrast to the previously discussed alternatives, greater emphasis on the ALARA concept would recognize (1) that annual doses actually received by individuals in connection with DOE operations are determined primarily by the extent to which the occupational ALARA concept is implemented, and (2) that an overall reduction in occupational radiation risks may be achieved in a reasonable manner through such implementation. Moreover, the second topic discussed in Presidential guidance to Federal agencies is devoted to this concept:

> No exposure is acceptable without regard to the reason for permitting it, and it should be general practice to maintain doses from radiation to levels below the limiting values specified in these recommendations. Therefore, it is fundamental to radiation protection that a sustained effort be made to ensure that collective doses, as well as annual, committed, and cumulative lifetime individual doses, are maintained as low as reasonably achievable (ALARA), economic and social factors being taken into account.

For these reasons, it is believed that dose reduction can best be achieved through increasing the Department's emphasis on the implementation of this concept.

(e) *Proposed rule.* As proposed, § 835.101 would contain a general requirement to conduct an occupational radiation protection program that includes the ALARA concept, and § § 835.1001 and 835.1002 would specifically require the use of optimization (ALARA) methods, as recommend by the ICRP, during the design phase for new facilities and for facility modifications.

These programs would require DOE approval, and compliance with the programs would be required. With regard to existing facilities and operations, the rule would require submittal of the program for DOE approval in accordance with schedules established by the DOE. It is expected to have one RPP common to each site. Inspection against the rule and the approved radiation protection programs would begin 2 years after the effective date of the rule. With regard to new facilities and operations initiated after the effective date of the rule, compliance with the rule, as well as with approved radiation protection programs, would be required.

(f) *Programmatic criteria for the ALARA* concept. Implementation of the ALARA concept is highly dependent upon facility conditions that affect costs. Thus, the same generic requirement for a safety measure could fail to be ALARA at a new facility because of unreasonably high doses and at an older facility because of unreasonably high costs. The Department therefore proposes to perform site-specific occupational evaluations of ALARA programs. Each program would be expected to meet the following criteria:

Policy. A policy would be established at the highest facility management level requiring that line managers maintain direction, oversight and control of ALARA program implementation sufficient to ensure compliance with the radiation protection program.

Training. Appropriate training on the necessity, nature, and implementation of the occupational ALARA concept would be required for those individuals with duties including any aspect of occupational radiation protection or who are occupationally exposed to radiation and/or radioactive material.

Design. During the design phase of new or modified facilities or operational processes, integration of appropriate methods for maintaining occupational exposures ALARA would be required.

Procedures. General operating procedures, including appropriate provisions for maintaining occupational exposures ALARA would be established.

Planning. For specific operations, planning that integrates measures adopted for maintaining occupational exposures ALARA would be conducted.

Audits. Periodic, comprehensive internal audits of the overall ALARA program, with audit results reported to the highest level of facility management, would be performed. Decisions regarding corrective action would be promptly rendered and followed by timely implementation.

Records. Action taken to meet these criteria would be recorded in sufficient detail to facilitate thorough DOE inspections.

Failure to meet one or more of these criteria would indicate an unacceptable ALARA program and could constitute a violation of 10 CFR part 835.

2. Protection Against Nonstochastic Effects

Nonstochastic effects normally do not occur unless the radiation dose exceeds a given threshold, thereby permitting the use of limiting values that prevent occurrence of such effects. ICRP Publication 41, (cited above) provides the data base supporting ICRP's position that, with the exception of the lens of the eye, nonstochastic effects will not be observed in organs and tissues receiving radiation doses of less than 50 rem in a year. The Department is not aware of more recent radiobiological information indicating that this nonstochastic dose limit should be changed and notes that ICRP has retained this value in their recent recommendations.[12] For these reasons, the Department proposes retention of 50 rem in a year as the DOE limiting value for nonstochastic effects to organs and tissues other than the ocular lens. In keeping with current Federal guidance, it is proposed that a limiting value of 15 rem be retained for the lens.

[11] National Council on Radiation Protection and Measurements. Recommendations on Limits for Exposure to Ionizing Radiation. Report No. 91. Bethesda, MD. 1987.

[12] International Commission on Radiological Protection. 1990 Recommendations of the International Commission on Radiological Protection. ICRP Publication 60. Annals of the ICRP 21(1–3). Pergammon Press, Oxford.

3. Protection of the Unborn Child

Current Presidential guidance to Federal agencies states:

> The dose equivalent to an unborn as a result of occupational exposure of a woman who has disclosed that she is pregnant should be maintained as low as reasonably achievable, and in any case should not exceed 0.5 rem (0.005 sievert) during the entire gestation period. Efforts should be made to avoid substantial variation above the uniform monthly exposure rate that would satisfy this limiting value.

The Department has followed this guidance and proposes to continue to do so through the rulemaking process. The 0.5-rem limit applies only to the unborn child of a declared pregnant woman, leaving the decision of whether to work under this restrictive regulation to the individual woman. This approach is considered necessary, in part, because of the provisions of title VII of the Civil Rights Act of 1964, as amended, regarding discrimination in employment practices. It is also necessary to avoid invasion of privacy. The recommendation to avoid nonuniform exposure conditions arises from information obtained in the study of atomic bomb survivors, which revealed that an embryo/fetus may be particularly susceptible to certain nonstochastic effects when irradiated at high dose rates. If exposure occurs primarily during the 8th to 15th week after conception, severe mental retardation may result; this risk is currently assessed at about 4 in 1,000 live births per rad.[13]

The Department proposes to retain its current limit of 0.5-rem (0.005 sievert) annual dose equivalent to the unborn child for the entire gestation period. This limitation is considered to be conservative because the dose rates involved are much lower than those encountered among the atomic bomb survivors.

4. Planned Special Exposures

The Department recognizes that overall occupational radiation risks are actually proportional to the lifetime accumulated dose rather than the dose in any given year. It is therefore considered acceptable in most cases to permit a higher-than-normal dose during a given year if the dose is fully compensated for by lower doses in preceding or subsequent years. Certain workers have skills important to plant and public safety, and for this and other reasons, it is recognized that unusual conditions can arise in which higher-than-normal doses can be justified. The term "planned special exposures" was adopted in ICRP Publication 26, along with a recommendation that such exposures be allowed under unusual conditions. The Department hereby proposes to retain a provision for planned special exposures. Under approved, well-justified, well-planned, well-controlled, highly infrequent and unusual conditions, operating management would continue to be permitted to allow doses exceeding the 5 rem-per-year limit. The intent is to retain the advantages of flexibility without significantly increasing any worker's actual risk. the planned special exposure alternative would not be used under emergency conditions, where there might be no time for extensive planning or to obtain approvals; other provisions are made in the rule for these eventualities (see section F below). The term "unusual" is made clear in the proposed rule by specifying two conditions, at least one of which must exist before a planned special exposure can be authorized. The conditions are that alternatives that would preclude exposures higher than the usual limiting values must either be unavailable or impractical.

The total dose from planned special exposures for a worker during any given year could not exceed 5 rem; thus, apart from emergency situations, the maximum annual dose that a worker could receive would be 10 rem. Every planned special exposure would have to be approved in advance by the DOE. Documentation of each planned special exposure in the individual's occupational exposure file would be required.

D. Radiation Safety Training

Two categories of workers, defined in the proposed rule, would be subject to the requirements in this part for radiation safety training—occupational workers and radiation workers. An occupational worker is any individual (DOE personnel, DOE contractor, or subcontractor employee) who performs work for, or in conjunction with, the DOE or utilizes DOE facilities. This group includes those individuals considered to be radiation workers. As proposed, the rule would establish training requirements for each category.

All occupational workers who may enter a controlled area at a DOE facility would be required to receive an orientation on radiation safety before any potential exposure to radiation or radioactive material at that facility. In addition, these workers would also be retrained whenever the radiation protection policies and procedures that might affect them are significantly changed. They would be subject to refresher training every 2 years. The level of training would be commensurate with the potential radiation protection problems encountered by the worker.

Radiation workers would have to be trained to familiarize them with the fundamentals of radiation protection and the ALARA concept. Retraining would be required every 2 years. Radiation workers would complete their training and demonstrate their knowledge before performing work in a radiological area. During field training, they would be required to be accompanied by, and under the supervision of, a trained radiation worker. The training would emphasize procedures specific to the individual's job assignment and would be commensurate with his or her work assignments. For example, the training of a radiation protection technician would require greater depth and comprehension in the principles of exposure control than would the training for a maintenance worker.

DOE guidance documents will be produced when there is a demonstrated need to assist plant operators in the planning and conduct of radiation protection training. These documents are to address a wide range of radiation protection topics.

E. Control of Exposure to Radiation and Radioactive Material

1. Introduction

The proposed rule incorporates a number of requirements that would control the extent of occupational exposures to radiation and radioactive material, establish controls over entry into areas in which such exposures could occur, and ensure warnings to workers whenever radiation and radioactive materials are present. In combination, these measures would provide a high degree of assurance that workers would not be inadvertently or unknowingly exposed.

The proposed rule would require that occupational workers and the workplace be routinely monitored. The measurement of individual occupational exposures would be accomplished by requiring personnel radiation dosimetry devices for all workers likely to receive a prescribed fraction of the allowable annual radiation dose. In addition, possible internal exposure of an individual from the intake of radioactive material would be measured using whole body counting and other bioassay techniques, as appropriate.

[13] "Radiation Protection Guidance to the Federal Agencies for Occupational Exposure." Federal Register, Vol. 52, No. 17, 1987.

Areas where radiation or radioactive materials may be present would have to be monitored for possible airborne and surface radioactive contamination as well as for radiation, where appropriate. Airborne radioactive material would be measured by taking and analyzing samples representative of the ambient air at work locations and would be detected by stationary air-monitoring instruments equipped with alarm devices.

Requirements for controlling radiation levels, as well as airborne and surface contamination, would be established. All personnel and equipment leaving a radiological area would have to be monitored for surface contamination. Proposed limiting values for contamination are provided; higher values would not be allowed in controlled areas—except in radiological areas or, in the case of fixed contamination, under prescribed conditions.

Any area where radiation and/or radioactive contamination levels are above specified values would have to be provided with built-in access controls. These controls may include barricades, control devices on entrances, locks, and alarms.

In order to make workers aware of radiation and contamination conditions (surface and airborne), the proposed rule would require that signs be clearly posted to identify those areas that are controlled to manage potential exposures and those areas where radiation levels exceed certain values. Containers of radioactive material, as well as radioactive items, would be required to be labeled, providing the information needed for purposes of radiation protection and the prevention of inadvertent transfer to locations outside of radiological areas.

The proposed system of control is intended to ensure that occupational exposures would be maintained at ALARA levels, that the Department's limiting values would not be exceeded, and that workers would be aware of and prepared to cope with emergency conditions and would not be exposed unknowingly to radiation or radioactive material.

2. Control of External Radiation Dose

The control of occupational exposures to radiation would be implemented through facility design and engineering controls, together with such procedural controls as work-area monitoring and posting, control of work-area access, and individual monitoring and dose assessment. Collectively, these controls would provide assurance that exposures would be maintained ALARA and within the Department's limiting values. Workplace monitoring provides a control mechanism for the identification and quantification of external radiation levels, enables measures to be taken to prevent unanticipated (and unplanned) exposures, and contributes to maintaining actual exposures at ALARA levels.

The proposed rule does not contain prescriptive criteria on the type and frequencies of workplace monitoring. As specified, the monitoring would have to be routine and sufficient to control potential sources and enable compliance with the radiation protection program and with the other requirements of this rule (e.g., area posting and worker dose limits). Determining the frequencies and locations of workplace monitoring would be left to on-site evaluations of the actual work and exposure situations. Proper implementation of these requirements would ensure that work areas and specific job tasks would be routinely evaluated from a radiation protection perspective. The training of individual workers, as described in this rule, would provide reasonable assurance that the basic knowledge and technical skills needed for the implementation of the operational program elements would be effective.

It is the position of DOE that this type of operational implementation by personnel trained in the principles and methods of radiation protection would provide an adequate level of regulatory control for facility workplace monitoring to ensure compliance with the requirements of this rule. Monitoring would be required to determine the external exposure to individuals. Radiation exposure would be measured and recorded to provide demonstrated and documented assurance of compliance with individual dose limits and the ALARA concept.

3. Control of Internal Radiation Dose

To the extent reasonably achievable, system and facility design and engineering controls, such as confinement and ventilation systems, would be used as the primary mechanism for confining radioactive materials and ensuring that radioactive material intakes (and resultant internal doses) are maintained at ALARA levels. Operational controls would also be established to minimize potential inhalation exposures.

Both retrospective and real-time monitoring for airborne contamination would be required. Retrospective monitoring involves the collection and analysis of air samples in strategic locations to detect and evaluate the extent of airborne radioactive material; the samples would be required to be representative of ambient air at work locations. This type of sampling would be required in areas where workers are likely to exceed an annual intake of 2 percent or more of the ALI values set forth in the rule. Real-time air monitoring is performed by constant air monitors that are capable of measuring, with a specified sensitivity, the current concentration of radionuclides in the air and of activating an alarm when a preset level is exceeded. Real-time monitoring would be required in areas where workers are likely to be exposed to concentrations of radioactivity in air exceeding 10 percent of the Derived Air Concentration (DAC) values set forth in the rule.

The proposed rule would address requirements for bioassay measurements—that is, measurements of radioactive material in and excreted from the body to determine the magnitude of internal doses, including directions regarding which workers should be included. These measurements would also confirm the effectiveness of the confinement and air monitoring systems.

4. Releases of Materials and Equipment

Contamination control programs would include the establishment of limits on the amount of fixed and removable contamination that could be transferred from a radiological area to a controlled area where radioactive materials other than natural background are normally not present. Proposed § 835.1101 would establish the regulatory framework for such controls. The requirements for unrestricted release of property from the DOE facilities are set forth in 10 CFR part 834.

As proposed, the rule would specify that material and equipment in radiological areas cannot be removed to controlled areas unless measurements are made to establish that removable contamination meets specified limits and that the combination of fixed and removable contamination does not exceed other specified limits. There are provisions, however, that permit conditional or controlled removal of contaminated material and equipment to controlled areas under specified conditions.

5. Records

The proposed rule includes requirements for the establishment and maintenance of records important to the documentation of working conditions as well as to subsequent evaluations of radiation protection compliance and performance. Records that would be

specifically required include those necessary to demonstrate compliance with the ALARA provisions of the proposed rule. In addition, reports must be provided to workers that inform them of their annual and cumulative exposures.

Individual occupational dose records would have to be maintained to provide individual external and internal dose measurement data for each worker. In addition, data would be recorded as necessary to assist at a later date in the verification, correction, or recalculation of recorded doses.

The proposed rule would also require that records be maintained of radiological conditions under which individuals were exposed and other facility information pertinent to exposures, results of surveys for the release of personal property, and results of surveys for radiation and radioactive material in the workplace. The appropriateness, quality, and accuracy of monitoring methods, techniques, and procedures would also be recorded.

Each worker's training as an occupational worker and as a radiation worker would have to be recorded. Where appropriate, demonstration and documentation of worker proficiency would be required.

6. Reports

Reports would be provided to workers to inform them of their annual and cumulative exposures. In addition, each worker's radiation exposure data would always be available to him or her. Certain required reports to DOE include personnel exposure data. In accordance with 10 CFR 830.350, any such report identifying a worker by name would have to be sent to that worker.

F. Accidents and Emergencies

The proposed rule specifies certain individuals as having key responsibilities and authorities during accident and emergency conditions. In the proposed rule, nonvariant terminology would be used each time it is necessary to designate these individuals. The proposed terminology is as follows:

(1) The Head of the responsible DOE Field Organization;

(2) Operating management; and

(3) The Emergency Director (i.e., the person on site having the emergency action responsibility).

It is believed that this terminology is sufficient to provide unequivocal designation for these individuals.

Occupational workers could be allowed to receive doses twice as large as those specified in §§ 835.202 and 835.205 for normal operation conditions, provided that all of the conditions specified in subpart M were met. The recovery of the bodies of deceased victims and the protection of health and property are also covered under this rule. Under extraordinary conditions, the necessary reduction in a potential hazard, protection of health, or prevention of substantial loss of property might not be possible under the restrictions mentioned above. In those cases, doses five times the normal limit could be authorized. With regard to lifesaving, a limiting value is not specified; dose limitations would be determined by the Emergency Director. Lifesaving action usually involves the prevention of prompt fatalities. Thus, judgments involved are complex and not susceptible to generic rulemaking.

The doses allowed in subpart M of the proposed rule would be in addition to those allowed for normal operating conditions, including planned special exposures. Before approving these doses and assigning duties, the Emergency Director would not be required to determine how much exposure a worker had already received during the current year. In many cases and under some conditions, time would not permit such determinations.

If an occupational worker were exposed to radiation in excess of the limiting values proposed herein (emergency or nonemergency situation), the proposed rule would require that the exposure be documented in the radiation exposure record of the individual. In addition, the incident would have to be investigated and the results reported to DOE in accordance with 10 CFR 830.350. The worker would not be allowed to receive further exposure until appropriate health experts advised that the employee could safely do so. The operation that caused the exposure would have to cease, pending a finding by DOE that the conditions that caused the exposure had been eliminated.

As a method of measuring possible radiation doses to workers resulting from an inadvertent nuclear chain reaction (criticality accident) within a workplace, the proposed rule would continue a requirement for both fixed nuclear accident dosimeters and special, individually worn personal dosimeters.

G. DOE Guidance Documents

To the extent possible, the statements in this proposed rule are prescriptive; that is each requirement is stated in mandatory terms. It is recognized that the affected plant operator is entitled to know what the Department considers acceptable with respect to compliance, and that there are a number of sections in the rule in which guidance would be helpful. The Department plans to issue guidance documents, as necessary, to describe at least one acceptable method for compliance with a specific rule. These are not intended to be the only methods permitted; alternative methods that provide at least an equivalent degree of protection will be considered consistent with the guidance. These documents, which will also clarify individual requirements, will be published as necessary.

III. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291, entitled "Federal Regulations," requires that a regulatory impact analysis be prepared prior to the promulgation of a "major rule." The DOE has concluded that this action is not a "major rule" for purpose of the Executive Order because its promulgation will not result in any of the following: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export market.

Pursuant to section 3(c) of E.O. 12291, this rule was submitted to the Director of the Office of Management and Budget. The Director has concluded his review under that Executive Order.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements in this part are not substantially different from existing reporting requirements contained in DOE contracts with DOE prime contractors covered by this rule. DOE will submit the collection of any new information requests concerning this

proposed rule to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act. 5 CFR 1320.1 *et seq.*

D. Review Under the National Environmental Policy Act

The DOE has reviewed the promulgation of 10 CFR part 385 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA. The Department has completed an Environmental Assessment and on the basis of that information is proposing to make a finding of no significant impact for this rule.

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

This proposed rule, when finalized, will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Naval Nuclear Propulsion Program

Section 309 of the Department of Energy Organization Act (Pub. L. 95–91), Executive Order 12344, and Public Law 98–525 establish the responsibilities and authority of the Director, Naval Nuclear Propulsion Program, overall facilities and activities that comprise the Program, a joint Navy-DOE organization solely responsible for the military application of nuclear energy in connection with naval warship propulsion. Pursuant to the purpose and direction of these actions, the standards, regulations, and requirements prescribed by the Director continue to apply to Program facilities and activities in lieu of the regulations in this part.

IV. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed rules set forth in this notice. To assist in comment resolution, commenters are requested to reference the applicable paragraph(s) (i.e., 835.101(a)) related to their comments, where possible. Twenty copies of written comments should be submitted to the address indicated in the **"ADDRESSES"** section of this notice. All comments received will be available for public inspection in the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by February 7, 1992, will be carefully assessed and fully considered prior to publication of the final rules. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (see 10 CFR 1004.11).

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, DOE contractors, or DOE. DOE is particularly interested in comments that discuss whether or not DOE may be subjecting its contractors to additional costs that are not contemplated by existing contractual relations or the PAAA. Comments concerning this subject should address the specific nature and scope of the additional costs to which contractors would be subjected and explain why these concerns are not already addressed in the current contractual relationship or PAAA.

DOE is also interested in comments concerning the differences between the proposed requirements and those of the Nuclear Regulatory Commission (NRC) and, in particular but not limited to, those concerning the use of committed dose and annual dose methods of calculating radiation exposure. Comments should indicate the substantive effects or the additional burden, if any, that the use of differing approaches by DOE and the NRC might have on DOE contractors, especially those who are also NRC licensees.

B. Public Hearing

1. Requests to speak at the hearing must be submitted to the address indicated in the **ADDRESSES** section of this notice and received by DOE by January 8, 1992.

Requests for oral presentations should contain a telephone number where you may be contacted prior to the hearing. Speakers are requested to submit 20 copies of their statement to DOE at the hearing.

2. DOE reserves the right to select the persons to be heard at the hearing, in the event there are more requests to be heard than time allows, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 10 minutes. The hearing will begin at 9 a.m.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made available to the public. The entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Office, 1E–190, 1000 Independence Ave., SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts may be purchased from the court reporter.

List of Subjects in 10 CFR Part 835

Emergency radiation exposures, Nuclear material, Occupational safety and health, Radiation exposures, Radiation protection, Radioactive material, Reporting and recordkeeping requirements, Safety during emergencies, Training.

For the reason set forth in the preamble, title 10, chapter III, of the Code of Federal Regulation is proposed to be amended by adding a new part 835 as set forth below.

Issued in Washington, DC, on November 20, 1991.

John C. Tuck,

Under Secretary.

PART 835—RADIATION PROTECTION FOR OCCUPATIONAL WORKERS

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Appendix A—Derived Air Concentrations (DAC) for Controlling Radiation Exposures to Workers at DOE Facilities

Appendix B—Alternative Absorption Factors and Lung Retention Classes for Specific Compounds

Appendix C—Derived Air Concentrations (DAC) for Workers from External Exposure During Immersion in a Contaminated Atmospheric Cloud

Appendix D—Surface Radioactivity Values

Appendix E—Derived Air Concentrations for Controlling Radiation Exposure to Workers at DOE Facilities

Authority: 42 U.S.C. 2201; 7191.

Subpart A—General Provisions

§ 835.1 Scope.

(a) *General.* The rules in this part establish radiation protection standards, limits, and program requirements for protecting workers and other persons from ionizing radiation at DOE facilities.

(b) *Exclusion.* The requirements in this part do not apply to:

(1) Activities that are regulated through a license by the Nuclear Regulatory Commission or a State under an Agreement with the Nuclear Regulatory Commission;

(2) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, as described in Public Law 98–525; or

(3) Activities conducted under the Nuclear Explosives and Weapons Safety Program relating to the prevention of accidental or unauthorized nuclear detonations.

(4) The radiation dose limits in this part do not apply to background radiation or to radiation doses received as a patient for purposes of medical diagnosis or therapy.

§ 835.2 Definitions.

(a) As used in this part:

Airborne radioactive material means radioactive material in any chemical or physical form that is dissolved, mixed, suspended, or otherwise entrained in air.

Ambient air means the general air in the area of interest (e.g., the general room atmosphere), as distinct from a specific stream or volume of air that may have different properties.

Annual limit on intake (ALI) means the quantity of a single radionuclide that, if inhaled or ingested in 1 year, would irradiate a person, represented by reference man (ICRP Publication 23), to the limiting value for control of occupational exposure.

ALARA means "As Low As is Reasonably Achievable", which is an approach to radiation protection to manage and control exposures (both individual and collective) to the work force and to the general public at levels as low as is practicable, taking into account social, technical, economic, practical, and public policy considerations. As used in this part, ALARA is not a dose limit but a process, which has the objective of attaining doses as far below applicable limits of this part as is reasonably achievable.

Background means:

(1) Naturally occurring radioactive materials;

(2) Cosmic and natural terrestrial radiation;

(3) Global fallout;

(4) Radon in concentrations or levels commonly found in buildings or the environment, independent of regulated activities; and

(5) Radiation from consumer products containing nominal amounts of radioactive material.

Calibration means to adjust and/or determine either:

(1) The response or reading of an instrument relative to a series of conventionally true values; or

(2) The strength of a radiation source relative to a standard (e.g., primary, secondary, or tertiary) or conventionally true value.

Continuous air monitor (CAM) means an instrument that continuously samples and measures the levels of airborne radioactive materials on a "real-time" basis and has alarm capabilities at preset levels.

Contractor means any entity under contract with The Department of Energy with the responsibility to perform activities at a DOE site or facility.

Controlled area means any area to which access is managed in order to protect individuals from exposure to radiation and/or radioactive materials.

Derived air concentration (DAC) means the airborne concentration that equals the ALI divided by the volume of air breathed by an average worker for a working year of 2,000 hours (assuming a breathing volume of 2.4×10^3 m^3). The value is equal to the derived airborne concentration found in ICRP Publication 30 converted to units of $\mu Ci/mL$.

DOE Activities means an activity taken for, or by, DOE that has the potential to result in occupational exposure to occupational workers to radiation or radioactive material. The activity may be, but is not limited to, design, construction, operation or

decommissioning. To the extent appropriate, the activity may involve a single DOE facility or operation or a combination of facilities and operations, possibly including an entire site.

Monitoring means actions intended to detect and quantify radiological conditions.

Nonstochastic effects means effects for which the severity varies with the dose and for which a threshold normally exists (e.g., radiation-induced opacities within the lens of the eye).

Occupational exposure means the exposure to ionizing radiation that occurs as a result of an individual's work assignment and that does not include radiation exposure received as a medical patient or through exposure from natural background radiation. Natural background radiation includes naturally occurring extraterrestrial and terrestrial sources, that are not proximally caused by operations or processes at a DOE site.

Occupational worker means an individual who is either a DOE or DOE-contractor employee; an employee of a subcontractor to a DOE contractor; or a visitor who performs work for or in conjunction with DOE or utilizes DOE facilities.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency, any State or political subdivision of, or any political entity within a State, any foreign government or nation or other entity and any legal successor, representative, agent or agency of the foregoing; provided that person does not include the Department or the United States Nuclear Regulatory Commission.

Radiation worker means an occupational worker whose job assignment involves operation of radiation producing devices or working with radioactive materials, or who is likely to be routinely occupationally exposed above 0.1 rem (0.001 sievert) per year, which is the sum of the annual effective dose equivalent from external irradiation and the committed effective dose equivalent from internal irradiation.

Radiological area means any area within a controlled area where an individual can receive a dose equivalent greater than 5 mrem (50 microsieverts) in 1 hour at a distance of 30 cm from the radiation source or any surface through which the radiation penetrates, or where airborne radioactive concentrations greater than 1/10 of the derived air concentrations are present (or are likely to be), or where surface contamination levels greater than those specified in Appendix D to this part are present.

Representative, as applied to the sampling of radioactive material, means sampling in such a manner that the sample closely approximates both the amount of activity and the physical and chemical properties of the material (e.g., particle size and solubility in the case of air sampling of the aerosol to which workers may be exposed).

Stochastic effects means malignant and hereditary disease for which the probability of an effect occurring, rather than its severity, is regarded as a function of dose without a threshold for radiation protection purposes.

(b) As used in this part to describe various aspects of radiation dose:

Absorbed dose (D) means the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest in that material. The absorbed dose is expressed in units of rad (or gray) (1 rad=0.01 gray).

Annual dose equivalent means the dose equivalent received in a year. Annual dose equivalent is expressed in units of rem (or sievert).

Annual effective dose equivalent means the effective dose equivalent received per year. The annual effective dose equivalent is expressed in units of rem (or sievert).

Collective dose equivalent and collective effective dose equivalent mean the sums of the dose equivalents or effective dose equivalents of all individuals in a specified population. Collective dose equivalent and collective effective dose equivalent are expressed in units of person-rem (or person-sievert).

Committed dose equivalent means the dose equivalent calculated to be received by a tissue or organ over a 50-year period after the intake of a radionuclide into the body. It does not include contributions from radiation sources external to the body. Committed dose equivalent is expressed in units of rem (or sievert).

Committed effective dose equivalent ($H_{E,\ 50}$) means the sum of the committed dose equivalents to various tissues in the body, each multiplied by the appropriate weighting factor. Committed effective dose equivalent is expressed in units of rem (or sievert). The internal dose component of the effective dose equivalent is always the committed effective dose equivalent in 10 CFR part 834 and is always identified in 10 CFR part 835 as either the annual effective dose equivalent or the committed effective dose equivalent.

Cumulative annual effective dose equivalent means the sum of the annual effective dose equivalents recorded for an individual for each year of employment at a DOE or DOE contractor facility, effective from the date of this rule.

Deep dose equivalent means the dose equivalent deriving from external radiation at a depth of 1 cm in tissue.

Dose equivalent (H) means the product of absorbed dose (D) in rads (or gray) in tissue, a quality factor (Q), and other modifying factors (N). Dose equivalent is expressed in units of rem (or sievert).

Effective dose equivalent (H_E) means the summation of the products of the dose equivalent received by specified tissues of the body (H_T) and the appropriate weighting factor (W_T)—that is, $H_E=\Sigma W_T H_T$. It includes the dose from radiation sources internal and/or external to the body. The effective dose equivalent is expressed in units of rem (or sievert).

Extremity means hands and arms below the elbow or feet and legs below the knee.

Lens-of-the-eye-dose-equivalent means the dose equivalent deriving from external radiation at a depth of 0.3 cm in the lens.

Quality factor means the principal modifying factor used to calculate the dose equivalent from the absorbed dose; the absorbed dose (expressed in rad or gray) is multiplied by the appropriate quality factor.

(Q). The quality factors to be used for determining dose equivalent in rem are shown below:

QUALITY FACTORS

Radiation type	Quality factor
X-rays, gamma rays, positrons, electrons (including tritium beta particles)	1
Neutrons, $\leq$ 10 keV	3
Neutrons, $>$ 10 keV	10
Protons and singly-charged particles of unknown energy with rest mass greater than one atomic mass unit	10
Alpha particles and multiple-charged particles (and particles of unknown charge) of unknown energy	20

When spectral data are insufficient to identify the energy of the neutrons, a quality factor of 10 shall be used.

When spectral data are sufficient to identify the energy of the neutrons, the following values of Q may be used:

QUALITY FACTORS FOR NEUTRONS

[Mean quality factors, $\bar{Q}$ (maximum value in a 30-cm dosimetry phantom), and values of neutron flux density that deliver in 40 hours, a maximum dose equivalent of 100 mrem.]

Neutron energy (MeV)	Mean quality factor	Neutron flux density ($cm^{-2}s^{-1}$)
2.5×10^{-8} thermal	2	680
1×10^{-7}	2	680
1×10^{-6}	2	560
1×10^{-5}	2	560
1×10^{-4}	2	580
1×10^{-3}	2	680
1×10^{-2}	2.5	700
1×10^{-1}	7.5	115
5×10^{-1}	11	27
1	11	19
2.5	9	20
5	8	16
7	7	17
10	6.5	17
14	7.5	12
20	8	11
40	7	10
60	5.5	11
1×10^{2}	4	14
2×10^{2}	3.5	13
3×10^{2}	3.5	11
4×10^{2}	3.5	10

Shallow dose equivalent means the dose equivalent deriving from external radiation at a depth of 0.007 cm in tissue.

Weighting factor (w_T) means the fraction of the overall health risk, resulting from uniform, whole-body irradiation, attributable to the specific tissue, (T). The dose equivalent to tissue, T, is multiplied by the appropriate weighting factor to obtain the effective dose equivalent to that tissue. The weighting factors are as follows:

WEIGHTING FACTORS FOR VARIOUS TISSUES

Organs or tissues, T	Weighting factor, W_T
Gonads	0.25
Breasts	0.15
Red bone marrow	0.12
Lungs	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30

"Remainder" means the five other organs or tissues with the highest dose (e.g., liver, kidney, spleen, thymus, adrenal, pancreas, stomach, small intestine, and upper large intestine). The weighting factor for each remaining organ or tissue is 0.06.

(c) Terms defined in the Atomic Energy Act or part 830 of this chapter and not defined in this part are used consistent with the meanings given in that Act or that part.

(d) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may be.

§ 835.3 General rule.

(a) No person or DOE personnel shall take or cause to be taken any action inconsistent with the requirements of:

(1) This part; or

(2) Any program, plan, schedule, or other process established by this part.

(3) Any applicable Federal statute or regulation concerning the exposure of workers and other persons at DOE facilities to radiation.

(b) With respect to a particular DOE activity, the person in charge of the activity shall be responsible for compliance with the requirements of this part.

(c) Where there is no contractor for a DOE activity, DOE shall ensure implementations of and compliance with the requirements of this part.

(d) Nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety.

Subpart B—Radiation Protection Programs

§ 835.101 Radiation protection programs.

(a) A DOE activity shall be conducted in compliance with its radiation protection program (RPP), as approved and modified by DOE.

(b) The content of a RPP shall be commensurate with the nature of the activities performed and shall include formal plans and measures for maintaining occupational radiation exposures as low as reasonably achievable (ALARA).

(c) The RPP shall include plans, schedules and other measures for achieving compliance with the regulations of this part no later than 2 years of the effective date of this part.

(d) A RPP shall specify the existing and/or anticipated operational tasks that are intended to be within the scope of the RPP. Any task outside the scope of a RPP shall not be initiated until an update of the RPP is approved by DOE.

(e) The content of a RPP shall address, but shall not necessarily be limited to, each requirement in this part.

(f) The RPP for an existing activity shall be submitted to DOE within 180 days of the effective date of this part.

(g) An update of the RPP shall be submitted to DOE:

(1) Whenever a change or an addition to the RPP is made;

(2) Prior to the initiation of a task not within the scope of the RPP; or

(3) Within 180 days of the effective date of any modifications to this part.

(h) An initial RPP or an update shall be considered approved 180 days after its submission unless approved or rejected by DOE at an earlier date. DOE may direct or make modifications to a RPP.

(i) A single RPP encompassing all the activities at a site shall be submitted for each site. Issues related to specific activities or contractors at a site may be addressed by including specific sections.

§ 835.102 Internal audits.

Internal audits of all functional elements of the radiation protection program shall be conducted no less frequently than every 3 years and shall include program content and implementation.

Subpart C—Standards for Internal and External Exposure

§ 835.201 [Reserved].

§ 835.202 Limits for occupational workers.

(a) The exposure of an occupational worker to radiation or radioactive material resulting from routine DOE nuclear and radiation activities shall not cause the following limits to be exceeded.

(1) *Stochastic effects.* The limit for the annual effective dose equivalent from both internal and external sources received is 5 rem (0.05 sievert).

(2) *Nonstochastic effects.* The limits are as follows:

(i) Lens of the eye, an annual dose equivalent of 15 rem (0.15 sievert).

(ii) Extremity, an annual dose equivalent of 50 rem (0.5 sievert).

(iii) Any organ or tissue, including skin, an annual dose equivalent of 50 rem (0.5 sievert).

(b) Background and therapeutic and diagnostic medical exposures shall not be included in dose records or in the assessment of compliance with limiting values.

§ 835.203 Combining internal and external dose equivalents resulting from DOE activities.

(a) The annual effective dose equivalent shall be determined by summing the annual effective dose equivalents from internally deposited radionuclides and from external exposure to radiation from radioactive material and/or radiation-generating devices.

(b) As long as the combined annual effective dose equivalent from all radionuclides retained in the body is confirmed by measurement, or by calculations based on measurements, to be 10 mrem (0.1 millisievert) or greater, this dose shall be included in

demonstrating compliance with § 835.202(a)(1).

(c) Determinations of the effective dose equivalent shall be made using the weighting factor values provided in § 835.2.

(d) For the special case of uniform external irradiation of the whole body, a weighting factor (w_T) equal to 1 may be used in the determination of the effective dose equivalent.

§ 835.204 Planned special exposures.

(a) Planned special exposures (nonemergency) that would result in an individual exceeding the annual effective dose equivalent limit are allowed in highly unusual situations where alternatives that would avoid higher exposures are unavailable or impractical. Such planned special exposures, together with the annual occupational dose received or anticipated to be received in that year, shall not exceed twice the annual effective dose equivalent limit specified in § 835.202(a)(1).

(b) All planned special exposures require written approval of the Head of the appropriate DOE Field Organization prior to the exposure. All subsequent planned special exposures to the same individual require, in addition, approval of the Assistant Secretary for Environment, Safety, and Health.

(c) Documentation of each planned special exposure shall be maintained in the individual's occupational exposure file.

§ 835.205 Determination of compliance for nonuniform exposure of the skin.

Nonuniform exposures of the skin from X rays, beta radiation, and/or radioactive materials on the skin are to be assessed as specified in this section. For purposes of demonstrating compliance with § 835.202(a)(2)(iii), assessments shall be conducted as follows:

(a) *Area of skin irradiated is 100 cm^2 or more.* The annual nonuniform dose equivalent shall be averaged over the 100 cm^2 of the skin receiving the maximum dose, added to any uniform dose equivalent also received by the skin, and recorded as the annual extremity or skin (shallow) dose equivalent.

(b) *Area of skin irradiated is 10 cm^2 or more, but is less than 100 cm^2.* The annual nonuniform dose equivalent (H) to the irradiated area shall be added to any uniform dose equivalent also received by the skin and recorded as the annual extremity or skin (shallow) dose equivalent. H is the dose equivalent averaged over the 1 cm^2 of skin receiving the maximum dose, D, reduced by the fraction f, which is the irradiated area in cm^2 divided by 100 cm^2 (i.e., H=fD). In no case shall a value of f less than 0.1 be used.

(c) *Area of skin irradiated is less than 10 cm^2.* The nonuniform dose equivalent shall be averaged over the 1 cm^2 of skin receiving the maximum dose. This dose equivalent shall:

(1) Be recorded in the individual's occupational exposure history as a special entry; and

(2) Not be added to any other dose equivalent, extremity or shallow dose equivalent (skin), recorded for the annual dose equivalent.

§ 835.206 Limits for the unborn child.

(a) The dose equivalent limit for the unborn child from the period of conception to birth, as a result of occupational exposure of a female occupational worker who has voluntarily notified her employer in writing that she is pregnant, is 0.5 rem (0.005 sievert).

(b) Frequent dose evaluations shall be made to avoid substantial variation above the uniform monthly exposure rate that would satisfy this limiting value.

(c) If the dose equivalent to the unborn child is determined to have already exceeded 0.5 rem (0.005 sievert) by the time a worker provides written notification to her employer of her pregnancy, the worker shall not be assigned to tasks where additional occupational exposure is likely during the remaining gestation period.

§ 835.207 Limits for minors and students.

(a) An individual under age 18 (minor) shall neither be employed in, nor allowed to enter, controlled areas in such a manner that he or she exceeds a limit of 0.1 rem (0.001 sievert) in a year from the sum of the committed effective dose equivalent from internal irradiation and the annual effective dose equivalent from external irradiation.

(b) Students under age 18 who are individually authorized to participate in educational activities are designated as minors and shall be subject to the provisions of paragraph (a) of this section. No additional exposure in excess of 0.1 rem (0.001 sievert) in a year is permitted in connection with such authorizations.

§ 835.208 Limits for members of the public entering a controlled area.

For any member of the public exposed to radiation and/or radioactive materials during direct on-site access at a DOE facility, the following limiting values are established.

(a) The sum of the committed effective dose equivalent from internal irradiation and the annual effective dose equivalent from external irradiation shall not exceed 0.1 rem (0.001 sievert).

(b) The annual dose equivalent to any organ or tissue from internal and external irradiation combined shall not exceed 5 rem (0.05 sievert)

§ 835.209 Concentrations of radioactive material in workplace air and water.

(a) The derived air concentration (DAC) values given in appendices A and C to this part shall be used in the control of occupational exposures to airborne radioactive material.

(b) With regard to inhalation exposures and external exposures from airborne radionuclides, compliance with this part shall be demonstrated through conformity with §§ 835.101 and 835.202, which establish the applicable regulatory limits.

(c) The estimation of internal dose equivalent shall be based on bioassay data rather than air concentration values. Air concentration values may be used for this purpose only if bioassay data are unavailable or inadequate.

(d) Concentrations of radionuclides in drinking water in controlled areas shall conform to the requirements set forth in 10 CFR part 834.

Subpart D—[Reserved]

Subpart E—Monitoring in the Workplace

§ 835.401 General requirements.

(a) Monitoring of individuals and areas shall be performed to:

(1) Demonstrate compliance with the regulations in this part;

(2) Document radiological conditions in the workplace;

(3) Detect changes in radiological conditions;

(4) Detect the gradual buildup of radioactive materials in the workplace; and

(5) Verify the effectiveness of engineering and process controls in containing radioactive materials and reducing radiation exposure.

(b) Area monitoring in the workplace shall be routinely performed, as necessary, to identify and control potential sources of personnel exposure to radiation and/or radioactive material.

(c) Instruments used for monitoring and contamination control shall be:

(1) Periodically calibrated and maintained on an established frequency of at least once per year;

(2) Appropriate for the type(s), levels, and energies of the radiation(s) encountered;

(3) Appropriate for existing environmental conditions; and

(4) Routinely tested for operability.

§ 835.402 Individual monitoring.

(a) Monitoring of individual exposures to external radiation shall be performed in accordance with the following:

(1) Personnel dosimetry shall be provided to and used by radiation workers who, under typical conditions, are likely to receive one or more of the following:

(i) An annual effective dose equivalent to the whole body of 0.1 rem (0.001 sievert) or more;

(ii) An annual dose equivalent to the skin or to any extremity of 5 rem (0.05 sievert) or more; or

(iii) An annual dose equivalent to the lens of the eye of 1.5 rem (0.015 sievert).

(2) Personnel dosimetry programs shall be adequate to demonstrate compliance with § 835.202 of this part, including routine dosimeter calibration and conformance with the requirements of the DOE Laboratory Accreditation Program for Personnel Dosimetry.

(b) Monitoring of individual exposures to internal radiation shall be performed in accordance with the following:

(1) Internal dose evaluation programs (including routine bioassay programs) shall be conducted for radiation workers who, under typical conditions, are likely to receive 0.1 rem (0.001 sievert) or more annual effective dose equivalent, and/or 5 rem (0.05 sievert) or more annual dose equivalent to any organ or tissue, from all occupational radionuclide intakes.

(2) Internal dose evaluation programs shall be adequate to demonstrate compliance with § 835.202.

§ 835.403 Area monitoring.

(a) Measurements of radioactivity concentrations in the ambient air of the workplace shall be performed as follows:

(1) Air sampling shall be performed in occupied areas where, under typical conditions, an individual is likely to receive an annual intake of 2 percent or more of the specified ALI values. For a given radionuclide and lung retention class, the ALI is the product of the DAC listed in appendix A to this part and the constant 2.4×10^9 ml. Samples shall be taken as necessary to detect and evaluate the extent of airborne radioactive material; these samples shall be representative of ambient air at work locations.

(2) Real-time air monitoring, using continuous air monitors as defined in § 835.2, shall be performed in normally occupied areas where an individual is likely to be exposed to a concentration of radioactivity in air exceeding 10 percent of any DAC value specified in appendix A to this part. Air monitors shall be routinely calibrated and maintained on an established frequency of at least once per year, and shall be capable of measuring one DAC when averaged over 8 hours (8 DAC-hours) under laboratory conditions.

(3) For the airborne radioactive material that could be encountered, real-time air monitors shall have alarm capability and sufficient sensitivity to alert potentially exposed personnel that immediate action is necessary in order to minimize or terminate inhalation exposures.

(b) Monitoring of radiation in the workplace shall be performed using stationary (area) and/or portable radiation instruments or a combination thereof. The instruments shall be readily available and used for workplace monitoring and shall be capable of measuring ambient radiation dose rates for the purpose of controlling radiation exposures.

§ 835.404 Surface radioactive contamination control and monitoring.

(a) Instruments and techniques used to provide surface radioactive contamination monitoring and control shall be adequate to assure compliance with the requirements specified in this section.

(b) Controls capable of precluding the inadvertent transfer of removable surface contamination to locations outside of radiological areas under normal operating conditions shall be maintained and verified.

(c) When, despite the controls specified in paragraph (b) of this section, removable contamination found on indoor workplace surfaces located outside of radiological areas exceeds the levels specified in the Radiation Protection Program (§ 835.101(a)) for these surfaces, the following actions shall be taken:

(1) Ad hoc controls shall be established for the contaminated areas adequate to prevent further dispersal of the contamination and to ensure that personnel are not unknowingly exposed.

(2) If the contamination levels exceed those specified in appendix D to this part, the ad hoc controls shall remain in effect until the levels no longer exceed these values.

(3) The objective of the decontamination effort shall be to restore the affected area(s) to pre-existing conditions.

(d) The levels of fixed surface contamination specified in appendix D of this part may be exceeded in areas within buildings, but outside of radiological areas, only where protective measures approved by the Head of the DOE Field Organization are provided.

(e) Any area in which surface contamination levels exceed the values specified in appendix D to this part shall be:

(1) Posted in accordance with § 835.603; and

(2) Controlled in a manner commensurate with the physical and chemical characteristics of the contaminant, the radionuclides present, and the fixed and removable contamination levels.

(f) Immediately before or after exit from a radiological area established to control surface and/or airborne radioactive contamination, personnel and personal property shall be monitored.

(g) Protective clothing shall be required for entry to areas in which removable surface contamination exists at levels exceeding those specified in appendix D to this part. At the exits of such areas, control techniques shall be provided to preclude the inadvertent transfer of contamination on protective clothing to other areas.

Subpart F—Entry Control Program

§ 835.501 Radiological areas.

(a) Personnel entry control shall be maintained for each radiological area.

(b) The degree of control shall be commensurate with existing and potential radiation hazards within the area.

(c) One or more of the following methods shall be used to ensure control:

(1) Signs and barricades;

(2) Control devices on entrances;

(3) Conspicuous visual and/or audible alarms;

(4) Locked entrance ways; and

(5) Administrative procedures.

(d) Administrative procedures shall be written as necessary to demonstrate compliance with paragraph (b) of this section.

(1) Methods specified above shall be supplemented by administrative procedures, as necessary, to comply with paragraph (b) of this section.

(2) These administrative procedures shall include actions essential to ensure the effectiveness and operability of barricades, devices, alarms, and locks and shall require authorizations (to perform work within the area) that include work-specific radiation protection measures specific for the authorized work.

(3) Administrative procedures may be substituted for the control methods listed above, provided that compliance with paragraph (b) of this section is achieved.

(c) No control(s) shall be installed at any radiological area exit that would prevent rapid evacuation of personnel under emergency conditions.

§ 835.502 Very high radiation areas.

(a) Except for field radiography, each area required to be posted as a very high radiation area by § 835.603 shall be equipped at each entrance or access point with one or more of the control devices listed in this paragraph:

(1) A device that functions automatically to prevent entry while a very high radiation area exists.

(2) A device which functions automatically to permit entry only after the radiation level is reduced below 0.1 rem (0.001 sievert) per hour at 30 cm from the radiation source or from any surface penetrated by the radiation.

(3) A device that functions automatically to prevent use or operation of the radiation source, thereby preventing the existence of a very high radiation area while one or more individuals are in the area.

(4) Locked entry ways. (Except during periods when access to the area is required, with positive control over, and radiation surveys made for, the initial entry and periodically as necessary.)

(b) Each area designated in paragraph (a) of this section shall be provided with the alarm devices listed in this paragraph:

(1) A device that energizes a conspicuous visual and/or audible alarm signal so that an individual entering a very high radiation area through a failed control device is aware of the radiation level and so that radiation protection personnel are aware of the entry. Administrative procedures shall define the required actions of personnel when alarms are activated.

(2) Devices that will automatically generate audible and visual alarm signals to alert personnel in the area before use or operation of the radiation source and in sufficient time to permit evacuation of the area or activation of a secondary control device that will prevent use or operation of the source.

(c) Locked exits shall have the capability of being opened from the inside (radiation side) without a key.

Subpart G—Posting and Labeling

§ 835.601 General requirements.

(a) Working areas that require posting because of the presence, or potential presence, of radiation and/or radioactive materials are delineated in the subsequent paragraphs of this section. Radioactive items, or containers of radioactive materials, shall be individually labeled if adequate warning is not provided by control measures and required posting.

(b) DOE approved signs, labels and radiation symbols shall be used to identify areas specified in this subpart.

(c) Required signs and labels shall have a yellow background. The radiation symbol shall be black or magenta.

(d) Signs required by this subpart shall be clear and conspicuous and may include radiological protection instructions.

§ 835.602 Controlled area.

(a) Each access point to a controlled area (as defined in § 835.2 of this part) shall be posted, designating it as a controlled area, whenever radioactive materials and/or radiation fields other than natural background may be present in the area.

(b) Signs used for this purpose may be selected by the contractor with approval of the Head of the appropriate DOE Field Organization.

§ 835.603 Radiological area.

(a) Each access point to a radiological area (as defined in § 835.2 of this part) shall be posted as required in this section.

(b) Posting for radiation shall comply with the following dose ranges:

(1) The words "Radiation Area" shall be posted at each access point if, under typical conditions, an individual is likely to receive a dose equivalent greater than 5 mrem (50 microsieverts), but less than 100 mrem (1 millisievert), in 1 hr at 30 cm from the radiation source or from any surface penetrated by the radiation.

(2) The words "High Radiation Area" shall be posted at each access point if, under typical conditions, an individual is likely to receive a dose equivalent of 100 mrem or greater (0.001 sievert), but less than 5 rem (0.05 sievert), in 1 hr at 30 cm from the radiation source or from any surface penetrated by the radiation.

(3) The words "Very High Radiation Area" shall be posted at each access point if, under typical conditions, an individual is likely to receive a dose of 5 rem (0.05 sievert) or greater in 1 hour at 30 cm from the radiation source or from any surface penetrated by the radiation.

(c) Within the areas defined in § 835.603(b) and in addition to the wording specified in this section, the anticipated dose-rate, or dose rate range, at 30 cm from the radiation source or from any surface penetrated by the radiation, shall be posted on or in conjunction with each required sign.

(d) Any area in which airborne radioactivity levels exceed, or are likely to exceed, 1/10 of the DAC value listed in Appendix A to this part shall be posted, designating the area as an "Airborne Radioactivity Area." Alternative wording for signs required by this section may be used with the approval of the Head of the appropriate DOE Field Organization or his designee.

(e) Except as noted in paragraphs (e)(1) and (2) of this section, radiological areas in which surface contamination levels exceed those specified in appendix D to this part shall be posted. Where such levels exceed values listed in appendix D to this part, but are less than 100 times those values the words "Surface Contamination Area" shall be posted at each access point The words "High Surface Contamination Area" shall be posted at each access point where such levels are >100 times the values listed in appendix D to this part.

(1) Where fixed surface contamination levels comply with conditions specified in § 835.404(d) of this part, posting is not required under this section

(2) Alternative wording for signs required by this section may be used with the approval of the Head of the appropriate DOE Field Organization or his designee.

Subpart H—Records

§ 835.701 Documentation requirements.

(a) Records shall be maintained to document compliance with this part and with radiation protection programs required by § 835.101.

(b) Actions taken to maintain occupational exposures as low as reasonably achievable, including the actions required for this purpose by § 835.101 as well as facility design and control actions required by §§ 835.1001, 835.1002, and 835.1003, shall be documented.

(c) The radiation dose recording requirements of this section apply to individuals for whom monitoring is provided.

(d) All records required by this section shall be transferred to the DOE upon cessation of activities at the site that could cause exposure to workers.

(e) The results of individual external and internal dose monitoring required by § 835.402 shall be recorded.

(f) The results of individual external and internal dose measurements that are performed, but are not required by § 835.402, shall be recorded. Recording of the nonuniform dose equivalent to the skin caused by surface contamination

on the skin (see § 835.205) is not required if the dose is less than 2 percent of the limit specified for the skin in § 835.202(a)(2)(iii).

(g) The records required by this section shall:

(1) Be sufficient to evaluate compliance with § 835.202;

(2) Be sufficient to provide dose information necessary to complete reports required by subpart I of this part and by § 830.350; and

(3) Include the following quantities for external dose:

(i) The annual effective dose equivalent from external sources of radiation received during the year;

(ii) The annual dose equivalent to the lens of the eye;

(iii) The annual dose equivalent to the skin; and

(iv) The annual dose equivalent to the extremities received during the year, including:

(A) Hands and forearm below the elbow; and

(B) Feet and legs below the knee.

(4) Include the following quantities for internal dose:

(i) Annual effective dose equivalent received during the year from radioactive material deposited in the body;

(ii) Annual dose equivalent to organ or tissue of concern received during the year from radioactive material deposited in the body;

(iii) Committed effective dose equivalent from intakes occurring during the year; and

(iv) Committed dose equivalent to organ or tissue of concern from intakes occurring during the year.

(5) Include the following quantities for the summation of the external and internal dose:

(i) Summation of the annual effective dose equivalents received from external and internal sources during the year; and

(ii) Cumulative annual effective dose equivalent received from external and internal sources while employed at the facility, since the effective date of this part.

(h) Efforts shall be made to attain records of prior occupational internal and external exposure.

(i) The records specified in this section for any individual shall be readily available to the individual involved.

(j) Data necessary to allow at a later date the verification, correction, or recalculation of recorded doses shall be generated and recorded.

§ 835.702 Monitoring and area control records.

The following information shall be recorded:

(a) Radiological conditions under which individuals were exposed;

(b) Information about radiation protection measures taken at the facility in which the exposures occurred that is pertinent to individual occupational dose histories;

(c) Results of surveys for the release of personal property;

(d) Results of surveys for radiation and radioactive material in the workplace; and

(e) Documentation necessary to demonstrate compliance with § 835.404(c).

§ 835.703 Records of monitoring methods.

(a) Records shall be maintained to document the appropriateness, quality, and accuracy of methods, techniques, and procedures used pursuant to §§ 835.403 and 835.404.

(b) Changes in equipment, techniques, and procedures shall be documented.

§ 835.704 Training records.

Training records shall be maintained, as necessary, to document compliance with §§ 835.901, 835.902, and 835.903.

Subpart I—Reports to Employees

§ 835.801 Reports to employees.

(a) Exposure records shall be made available to all occupational workers on an individual basis.

(b) Upon request from the worker, records of exposure shall be provided to terminated employees as soon as the data are available, but no later than 90 days after termination.

(c) The person in charge of each DOE or DOE-contractor-operated facility shall, on an annual basis, provide a summary radiation dose report to each radiation worker who received occupational radiation dose(s) at that facility. This report shall include a summary of annual, cumulative, and committed effective dose equivalent for that worker.

(d) Detailed information concerning any worker's exposure shall be made available to the worker upon request of the worker, consistent with the provisions of the Privacy Act (5 U.S.C. 552a).

(e) When a DOE contractor is required to report to the Department, pursuant to § 830.350, any exposure of an individual to radiation or radioactive material, the contractor shall also provide that individual with a report on his or her exposure data included therein. Such report shall be transmitted at a time not later than the transmittal to the Department.

Subpart J—Radiation Safety Training

§ 835.901 Occupational workers.

(a) All occupational workers, as defined in § 835.2 of this part, who may enter a controlled area at a DOE facility shall receive an orientation in radiation safety at that facility before admission to controlled areas. Specific instruction concerning prenatal exposure risks to the unborn child shall be provided to all female occupational workers who may enter a controlled area, as well as to their supervisors and coworkers. Allowance may be made for previous training on generic radiation safety topics (i.e., those not specific to a facility), provided the training was received at another DOE facility within the past 2 years; documentation of the training shall clearly identify the individual's name, date of training, topics covered, and name of the certifying individual. The knowledge of radiation safety possessed by occupational workers shall be verified by examination.

(b) Retraining shall be provided when there is a significant change to radiation protection policies and procedures that affect occupational workers and shall be conducted at intervals not to exceed 2 years.

§ 835.902 Radiation workers.

Radiation worker training programs and retraining shall be established and conducted at a sufficient frequency (not to exceed a period of 2 years) to familiarize the worker with the fundamentals of radiation protection and the ALARA process. Training shall include both classroom and applied training. The training shall precede assignment as a radiation worker, or it may be concurrent with assignment as a radiation worker if the worker is accompanied by and under the direct supervision of a trained radiation worker. Radiation worker training not specific to a given facility may be waived provided that: This training has been received at another DOE facility within the past 2 years; there is provision of proof-of-training in the form of a certification document containing the individual's name, date of training, and specific topics covered; and an appropriate official has certified the training of the individual. The knowledge of radiation safety possessed by radiation workers shall be verified by examination to include demonstration prior to an unsupervised assignment. The training shall

emphasize procedures specific to an individual's job assignment. The level of training is to be commensurate with each worker's assignment.

§ 835.903 Radiation protection technician.

Training and retraining programs for radiation protection technicians shall be established and conducted at a sufficient frequency, not to exceed every 2 years, to familiarize technicians with the fundamentals of radiation protection and the proper procedures for maintaining exposures ALARA. This program shall include both classroom and applied training. The training shall precede performance of tasks assigned to radiation protection technicians, or if the individual is accompanied by and under the direct supervision of a trained person, it may be concurrent with such task assignments. The required level of knowledge of radiation safety possessed by radiation protection technicians shall be verified by examination, to include demonstration prior to any unsupervised work assignment. The training program shall emphasize procedures specific to the facility where the technician is assigned. The level of training shall be commensurate with the technician's assignment.

Subpart K—Design and Control

§ 835.1001 Design and control.

Radiation exposure in controlled workplace areas shall be as low as is reasonably achievable through facility design and control. The primary methods used shall be physical design features (e.g., confinement, ventilation, remote handling, and shielding). Administrative controls and procedural requirements shall be employed only as supplemental methods to control radiation exposure.

§ 835.1002 Facility design.

During the design of new facilities or modification of old facilities, the following objectives shall be adopted:

(a) Optimization principles (ALARA) shall be utilized in developing and justifying facility design and physical controls.

(b) The design objective for controlling personnel exposure from external sources of radiation in continuously occupied controlled areas shall be to maintain exposure levels below an average of 0.5 mrem (5 microsievert) per hour and as far below this average as is reasonably achievable. The design objectives for exposure rates for potential exposure to a radiation worker where occupancy is generally not continuous shall be as low as reasonably achievable and shall not exceed 20 percent of the applicable standards in § 835.202.

(c) Regarding the control of airborne radioactive material, the design objective shall be under normal conditions to avoid releases to the workplace atmosphere and in any situation, to control the inhalation of such material by workers to levels that are as low as is reasonably achievable; confinement and ventilation shall normally be used.

(d) The design or modification of a facility and the selection of materials shall include features that facilitate maintenance, decontamination, and decommissioning.

§ 835.1003 Control procedures.

(a) During routine operations, the combination of design and control procedures shall provide that:

(1) The anticipated magnitude of the committed effective dose equivalent and any effective dose equivalent from external exposure shall not exceed 5 rem (0.05 sievert) in a year;

(2) The anticipated magnitude of the committed dose equivalent to any organ or tissue, plus any dose equivalent from external exposure, shall not exceed 50 rem (0.5 sievert) in a year; and

(3) Exposure levels are as low as reasonably achievable.

(b) Compliance with the requirements in paragraph (a) of this section shall be demonstrated by appropriate monitoring pursuant to the provisions of § 835.402 of this part.

Subpart L—Releases of Materials and Equipment From Radiological Areas

§ 835.1101 Releases of materials and equipment from radiological areas.

The following requirements apply for the release of materials and equipment from radiological areas for use in controlled areas.

(a) In radiological areas established to control surface or airborne radioactive material, material, and equipment shall be treated as radioactive material and shall not be released from radiological areas to controlled areas if either of the following conditions exist:

(1) Measurements of accessible surfaces show that either the total or removable contamination levels exceed the values specified in appendix D to this part; or

(2) Prior use suggests that the contamination levels on inaccessible surfaces are likely to exceed the values specified in appendix D to this part.

(b) Material and equipment exceeding the total and removable contamination levels specified in appendix D to this part shall be conditionally released for movement on-site from one radiological area for immediate placement in another radiological area only if appropriate monitoring and control procedures are established and exercised.

(c) Under exceptional conditions, material and equipment with fixed contamination levels that exceed the limits specified in appendix D to this part may be released for use in controlled areas outside of the radiological areas. As a condition of such release, materials shall be routinely monitored, clearly labeled, and/or tagged to alert personnel of the contaminated status; appropriate administrative procedures shall be established and exercised to maintain control of these items.

(d) The records for release of potentially contaminated material and equipment shall describe the property, the date of the last monitoring operation, the identity of the individual who performed the monitoring operation, the type and identification number of the monitoring instrument used, and the results of the monitoring operation.

Subpart M—Accidents and Emergencies

§ 835.1201 Accidental and emergency exposures.

(a) An occupational worker whose exposure has exceeded one or more of the limits specified in §§ 835.202 and 835.205, as a result of an emergency or accident situation, may return to work in radiological areas under the following conditions:

(1) Approval is first obtained from the contractor management and the Head of the responsible DOE Field Organization.

(2) The decision is based on advice from radiation protection and medical personnel.

(3) The affected worker concurs with the decision.

(b) Emergency and/or accident exposures shall be recorded in the individual's occupational exposure file and reported to the DOE in accordance with § 830.350.

(c) When the conditions under which the emergency or accident exposures were received have been eliminated, operating management shall notify the Head of the responsible DOE Field Organization.

(d) Operations after an emergency or accidental exposure in excess of the limits specified in §§ 835.202 and 835.205 may be resumed only with the approval of the DOE.

(e) Occurrence reports to DOE regarding emergencies and/or accidents

shall be prepared and submitted in accordance with § 830.350.

§ 835.1202 General considerations.

(a) The risk of injury to those persons involved in rescue and recovery operations shall be minimized.

(b) Operating management shall weigh actual and potential risks to rescue and recovery workers against the benefits to be gained.

(c) Rescue action that might involve substantial personnel risk shall be performed by volunteers.

(d) At all times, one or more designated individuals shall have the authority to make decisions and direct emergency action as required by §§ 835.1202(f) and 835.1203. While on site, the individual(s) having this emergency action authority shall be designated the Emergency Director(s) for the purposes of §§ 835.1202 and 835.1203.

(e) Records shall be maintained as necessary to facilitate identification of the Emergency Director(s) in charge during any emergency situation required to be reported to DOE.

(f) The Emergency Director shall ensure that each emergency worker is advised beforehand of the known or anticipated hazards to which the worker will be subjected.

§ 835.1203 Emergency situations.

(a) With regard to the saving of human life, the Emergency Director shall:

(1) Determine the course of action for rescuing any victim(s) considered to be alive; and

(2) Evaluate the potential amount of exposure to rescue personnel and establish a case-specific rescue dose objective for the rescue mission.

(b) With regard to the recovery of deceased victims:

(1) The limits specified in §§ 835.202 and 835.205 are applicable unless the Emergency Director determines that it is necessary to establish different values.

(2) The limiting values established for this purpose shall not exceed those specified in §§ 835.202 and 835.205 by more than a factor of 2.

(c) With regard to the protection of health and property:

(1) The Emergency Director may establish an emergency dose objective if it is essential to reduce a potential hazard, to protect health, or to prevent a substantial loss of property.

(2) Except as noted in paragraph (c)(3) of this section, the limiting values for individual exposures in the emergency dose objective shall not exceed those specified in §§ 835.202 and 835.205 by more than a factor of 2.

(3) Under special circumstances, the Emergency Director may determine that the necessary reduction in a potential hazard, the necessary protection of health, or the necessary prevention of substantial loss of property cannot be achieved under the exposure limitations specified for an emergency dose objective.

(i) Under these circumstances the Emergency Director may establish an extreme emergency dose objective.

(ii) For individual exposures, the limiting values in the extreme emergency dose objective shall not exceed those specified in §§ 835.202 and 835.205 by more than a factor of 5.

(4) Limiting values established for an extreme emergency dose objective shall be applicable only to volunteers.

(5) The provisions of paragraph (a) of this section are applicable if the Emergency Director determines that one or more of the following conditions exist:

(i) Human life could be endangered after the incident because of exposure to radiation and/or radioactive material; or

(ii) There could be loss of property inimical to public safety.

§ 835.1204 Nuclear accident dosimetry.

(a) Installations possessing sufficient quantities and kinds of fissile material to potentially constitute a critical mass, such that the excessive exposure of personnel to radiation from a nuclear accident is possible, shall provide nuclear accident dosimetry for those personnel.

(b) Nuclear accident dosimetry shall include the following:

(1) A method to conduct initial screening of personnel involved in a nuclear accident to determine whether significant exposures to radiation occurred.

(2) Methods and equipment for analysis of biological materials.

(3) A system of fixed nuclear accident dosimeter units capable of:

(i) Determining the absorbed dose from neutrons, of 10 to 10,000 rad (0.1 to 100 gray), with an accuracy of ±25 percent;

(ii) Providing the approximate neutron spectrum; and

(iii) Determining the absorbed dose from gamma radiation of 10 to 10,000 rad (0.1 to 100 gray), with an accuracy of ±20 percent.

(4) Personal nuclear accident dosimeters capable of:

(i) Determining the absorbed dose from neutrons, of 10 to 1,000 rad (0.1 to 10 gray), with an accuracy of ±30 percent.

(ii) Determining the absorbed dose from gamma radiation, of 10 to 1,000 rad (0.1 to 10 gray), with an accuracy of ±20 percent.

(5) Personal nuclear accident dosimeters shall be provided for and worn by all personnel who enter locations in which installed criticality alarm systems are required.

Appendix A*

Derived Air Concentrations (DAC) for Controlling Radiation Exposures to Workers at DOE Facilities.

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	(D / W / Y)
	(μCi/mL)	(μCi/mL)	(μCi/mL)	
H-3 (Water) [2]	2.E−05	2.E−05	2.E−05	St/St/St
H-3 (Elemental) [2]	5.E−01	5.E−01	5.E−01	St/St/St
Be-7	(−[3])	9.E−06	8.E−06	/St/St
Be-10	—	6.E−08	6.E−09	/St/St
C-11 (Org) [2]	2.E−04	2.E−04	2.E−04	St/St/St
C-11 (CO_3) [2]	5.E−04	5.E−04	5.E−04	St/St/St
C-11 (CO_2) [2]	3.E−04	3.E−04	3.E−04	St/St/St
C-14 (Org) [2]	1.E−06	1.E−06	1.E−06	St/St/St
C-14 (CO_3) [2]	7.E−04	7.E−04	7.E−04	St/St/St
C-14 (CO_2) [2]	9.E−05	9.E−05	9.E−05	St/St/St
F-18	3.E−05	4.E−05	3.E−05	St/St/St
Na-22	3.E−07	—	—	St/ /
Na-24	2.E−06	—	—	St/ /
Mg-28	7.E−07	5.E−07	—	St/St/
Al-26	3.E−08	3.E−08	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Si-31	1.E−05	1.E−05	1.E−05	St/St/St
Si-32	1.E−07	5.E−08	2.E−09	St/St/St
P-32	4.E−07	2.E−07	—	St/St/
P-33	3.E−06	1.E−06	—	St/St/
S-35	7.E−06	9.E−07	—	St/St/
S-35 (Gas)	—	6.E−06	—	/St/
Cl-36	1.E−06	1.E−07	—	St/St/
Cl-38	2.E−05	2.E−05	—	St/St/
Cl-39	2.E−05	2.E−05	—	St/St/
K-40	2.E−07	—	—	St/ /
K-42	2.E−06	—	—	St/ /
K-43	4.E−06	—	—	St/ /
K-44	3.E−05	—	—	St/ /
K-45	5.E−05	—	—	St/ /

* See Appendix E for additional information.

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
H-3 (Water) [2]	8.E+05	8.E+05	8.E+05	St/St/St
H-3 (Elemental) [2]	2.E+10	2.E+10	2.E+10	St/St/St
Be-7	(−[3])	3.E+05	3.E+05	/St/St
Be-10	—	2.E+03	2.E+02	/St/St
C-11 (Org) [2]	6.E+06	6.E+06	6.E+06	St/St/St
C-11 (CO_2) [2]	E+07	2.E+07	2.E+07	St/St/St
C-11 (CO) [2]	1.E+07	1.E+07	1.E+07	St/St/St
C-14 (Org) [2]	4.E+07	4.E+04	4.E+07	St/St/St
C-14 (CO) [2]	3.E+07	3.E+07	3.E+07	St/St/St
C-14 (CO_2) [2]	3.E+06	3.E+06	3.E+06	St/St/St
F-18	1.E+06	1.E+06	1.E+06	St/St/St
Na-22	1.E+04	—	—	St/ /
Na-24	8.E+04	—	—	St/ /
Mg-28	3.E+04	2.E+04	—	St/St/
Al-26	1.E+03	1.E+03	—	St/St/
Si-31	4.E+05	5.E+05	4.E+05	St/St/St
Si-32	4.E+03	2.E+03	8.E+01	St/St/St
P-32	1.E+04	6.E+03	—	St/St/
P-33	1.E+05	4.E+04	—	St/St/
S-35	3.E+05	3.E+04	—	St/St/
S-35 (Gas)	—	2.E+05	—	/St/
Cl-36	4.E+04	4.E+03	—	St/St/
Cl-38	6.E+05	7.E+05	—	St/St/
Cl-39	8.E+05	9.E+05	—	St/St/
K-40	6.E+03	—	—	St/ /
K-42	7.E+04	—	—	St/ /
K-43	1.E+05	—	—	St/ /
K-44	1.E+06	—	—	St/ /
K-45	2.E+06	—	—	St/ /

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Ca-41	—	2.E−06	—	/E /
Ca-45	—	3.E−07	—	/St/
Ca-47	—	4.E−07	—	/St/
Sc-43	—	—	1.E−05	/ /St
Sc-44m	—	—	3.E−07	/ /St
Sc-44	—	—	5.E−06	/ /St
Sc-46	—	—	1.E−07	/ /St
Sc-47	—	—	1.E−06	/ /St
Sc-48	—	—	6.E−07	/ /St
Sc-49	—	—	2.E−05	/ /St
Ti-44	5.E−09	1.E−08	2.E−09	St/St/St
Ti-45	1.E−05	1.E−05	1.E−05	St/St/St
V-47	4.E−05	4.E−05	—	St/St/
V-48	4.E−07	3.E−07	—	St/St/
V-49	1.E−05	7.E−06	—	BS/St/
Cr-48	5.E−06	3.E−06	3.E−06	St/St/St
Cr-49	3.E−05	4.E−05	4.E−05	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1] (D / W / Y)
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	
Cr-51	2.E−05	1.E−05	8.E−06	St/St/St
Mn-51	2.E−05	2.E−05	—	St/St/
Mn-52m	4.E−05	4.E−05	—	St/St/
Mn-52	5.E−07	4.E−07	—	St/St/
Mn-53	5.E−06	5.E−06	—	BS/St/
Mn-54	4.E−07	3.E−07	—	St/St/
Mn-56	6.E−06	9.E−06	—	St/St/
Fe-52	1.E−06	1.E−06	—	St/St/
Fe-55	8.E−07	2.E−06	—	St/St/
Fe-59	1.E−07	2.E−07	—	St/St/
Fe-60	3.E−09	8.E−09	—	St/St/
Co-55	—	1.E−06	1.E−06	/St/St
Co-56	—	1.E−07	8.E−08	/St/St
Co-57	—	1.E−06	3.E−07	/St/St
Co-58m	—	4.E−05	3.E−05	/St/St
Co-58	—	5.E−07	3.E−07	/St/St
Co-60m	—	2.E−03	1.E−03	/St/St
Co-60	—	7.E−08	1.E−08	/St/St
Co-61	—	3.E−05	2.E−05	/St/St
Co-62m	—	7.E−05	7.E−05	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	(D / W / Y)
	(Bq/m³)	(Bq/m³)	(Bq/m³)	
Ca-41	—	6.E+04	—	/BS/
Ca-45	—	1.E+04	—	/St/
Ca-47	—	1.E+04	—	/St/
Sc-43	—	—	4.E+05	/ /St
Sc-44m	—	—	1.E+04	/ /St
Sc-44	—	—	2.E+05	/ /St
Sc-46	—	—	4.E+03	/ /St
Sc-47	—	—	5.E+04	/ /St
Sc-48	—	—	2.E+04	/ /St
Sc-49	—	—	8.E+05	/ /St
Ti-44	2.E+02	4.E+02	9.E+01	St/St/St
Ti-45	4.E+05	5.E+05	5.E+05	St/St/St
V-47	1.E+06	1.E+06	—	St/St/
V-48	2.E+04	1.E+04	—	St/St/
V-49	5.E+05	3.E+05	—	BS/St/
Cr-48	2.E+05	1.E+05	1.E+05	St/St/St
Cr-49	1.E+06	2.E+06	1.E+06	St/St/St
Cr-51	7.E+05	4.E+05	3.E+05	St/St/St
Mn-51	8.E+05	9.E+05	—	St/St/
Mn-52m	1.E+06	2.E+06	—	St/St/
Mn-52	2.E+04	1.E+04	—	St/St/
Mn-53	2.E+05	2.E+05	—	BS/St/
Mn-54	1.E+04	1.E+04	—	St/St/
Mn-56	2.E+05	3.E+05	—	St/St/
Fe-52	5.E+04	4.E+04	—	St/St/
Fe-55	3.E+04	6.E+04	—	St/St/
Fe-59	5.E+03	8.E+03	—	St/St/
Fe-60	1.E+02	3.E+02	—	St/St/
Co-55	—	4.E+04	4.E+04	/St/St
Co-56	—	5.E+03	3.E+03	/St/St
Co-57	—	4.E+04	1.E+04	/St/St
Co-58m	—	1.E+06	1.E+06	/St/St
Co-58	—	2.E+04	1.E+04	/St/St
Co-60m	—	6.E+07	4.E+07	/St/St
Co-60	—	3.E+03	5.E+02	/St/St
Co-61	—	1.E+06	9.E+05	/St/St
Co-62m	—	3.E+06	2.E+06	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Ni-56 (Inorg)	8.E-07	5.E-07	—	St/St/
Ni-56 (Vapor)	—	5.E-07	—	/St/
Ni-57 (Inorg)	2.E-06	1.E-06	—	St/St/
Ni-57 (Vapor)	—	3.E-06	—	/St/
Ni-59 (Inorg)	2.E-06	3.E-06	—	St/St/
Ni-59 (Vapor)	—	8.E-07	—	/St/
Ni-63 (Inorg)	7.E-07	1.E-06	—	St/St/
Ni-63 (Vapor)	—	3.E-07	—	/St/
Ni-65 (Inorg)	1.E-05	1.E-05	—	St/St/
Ni-65 (Vapor)	—	7.E-06	—	/St/
Ni-66 (Inorg)	7.E-07	3.E-07	—	St/St/
Ni-66 (Vapor)	—	1.E-06	—	/St/
Cu-60	4.E-05	5.E-05	4.E-05	St/St/St
Cu-61	1.E-05	2.E-05	1.E-05	St/St/St
Cu-64	1.E-05	1.E-05	9.E-06	St/St/St
Cu-67	3.E-06	2.E-06	2.E-06	St/St/St
Zn-62	—	—	1.E-06	/ /St
Zn-63	—	—	3.E-05	/ /St
Zn-65	—	—	1.E-07	/ /St
Zn-69m	—	—	3.E-06	/ /St
Zn-69	—	—	6.E-05	/ /St
Zn-71m	—	—	7.E-06	/ /St
Zn-72	—	—	5.E-07	/ /St
Ga-65	7.E-05	8.E-05	—	St/St/
GA-66	1.E-06	1.E-06	—	St/St/
Ga-67	6.E-06	4.E-06	—	St/St/
Ga-68	2.E-05	2.E-05	—	St/St/
Ga-70	7.E-05	8.E-05	—	St/St/
Ga-72	2.E-06	1.E-06	—	St/St/
Ga-73	6.E-06	6.E-06	—	St/St/
Ge-66	1.E-05	8.E-06	—	St/St/
Ge-67	4.E-05	4.E-05	—	St/St/
Ge-68	2.E-06	4.E-08	—	St/St/
Ge-69	6.E-06	3.E-06	—	St/St/
Ge-71	2.E-04	2.E-05	—	St/St/
Ge-75	3.E-05	3.E-05	—	St/St/
Ge-77	4.E-06	2.E-06	—	St/St/
Ge-78	9.E-06	9.E-06	—	St/St/
As-69	—	5.E-05	—	St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Ni-56 (Inorg)	3.E+04	2.E+04	—	St/St/
Ni-56 (Vapor)	—	2.E+04	—	/St/
Ni-57 (Inorg)	7.E+04	5.E+04	—	St/St/
Ni-57 (Vapor)	—	1.E+05	—	/St/
Ni-59 (Inorg)	6.E+04	1.E+05	—	St/St/
Ni-59 (Vapor)	—	3.E+04	—	/St/
Ni-63 (Inorg)	3.E+04	4.E+04	—	St/St/
Ni-63 (Vapor)	—	1.E+04	—	/St/
Ni-65 (Inorg)	4.E+05	5.E+05	—	St/St/
Ni-65 (Vapor)	—	3.E+05	—	/St/
Ni-66 (Inorg)	3.E+04	1.E+04	—	St/St/
Ni-66 (Vapor)	—	5.E+04	—	/St/
Cu-60	1.E+06	2.E+06	2.E+06	St/St/St
Cu-61	5.E+05	6.E+05	5.E+05	St/St/St
Cu-64	5.E+05	4.E+05	3.E+05	St/St/St
Cu-67	1.E+05	8.E+04	7.E+04	St/St/St
Zn-62	—	—	4.E+04	/ /St
Zn-63	—	—	1.E+06	/ /St
Zn-65	—	—	4.E+03	/ /St
Zn-69m	—	—	1.E+05	/ /St
Zn-69	—	—	2.E+06	/ /St
Zn-71m	—	—	3.E+05	/ /St
Zn-72	—	—	2.E+04	/ /St
Ga-65	3.E+06	3.E+06	—	St/St/
Ga-66	5.E+04	5.E+04	—	St/St/
Ga-67	2.E+05	2.E+05	—	St/St/
Ga-68	6.E+05	8.E+05	—	St/St/
Ga-70	3.E+06	3.E+06	—	St/St/
Ga-72	6.E+04	5.E+04	—	St/St/
Ga-73	2.E+05	2.E+05	—	St/St/
Ge-66	4.E+05	3.E+05	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Ge-67	1.E+06	2.E+06	—	St/St/
Ge-68	6.E+04	2.E+03	—	St/St/
Ge-69	2.E+05	1.E+05	—	St/St/
Ge-71	7.E+06	6.E+05	—	St/St/
Ge-75	1.E+06	1.E+06	—	St/St/
Ge-77	2.E+05	9.E+04	—	St/St/
Ge-78	4.E+05	3.E+05	—	St/St/
As-69	—	2.E+06	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
As-70	—	2.E−05	—	/St/
As-71	—	2.E−06	—	/St/
As-72	—	6.E−07	—	/St/
As-73	—	7.E−07	—	/St/
As-74	—	3.E−07	—	/St/
As-76	—	6.E−07	—	/St/
As-77	—	2.E−06	—	/St/
As-78	—	9.E−06	—	/St/
Se-70	1.E−05	2.E−05	—	St/St/
Se-73m	6.E−05	6.E−05	—	St/St/
Se-73	6.E−06	7.E−06	—	St/St/
Se-75	3.E−07	3.E−07	—	St/St/
Se-79	3.E−07	2.E−07	—	St/St/
Se-81m	3.E−05	3.E−05	—	St/St/
Se-81	9.E−05	1.E−04	—	St/St/
Se-83	5.E−05	5.E−05	—	St/St/
Br-74m	1.E−05	2.E−05	—	St/St/
Br-74	3.E−05	3.E−05	—	St/St/
Br-75	2.E−05	2.E−05	—	St/St/
Br-76	2.E−06	2.E−06	—	St/St/
Br-77	1.E−05	8.E−06	—	St/St/
Br-80m	7.E−06	6.E−06	—	St/St/
Br-80	8.E−05	9.E−05	—	St/St/
Br-82	2.E−06	2.E−06	—	St/St/
Br-83	3.E−05	3.E−05	—	St/St/
Br-84	2.E−05	3.E−05	—	St/St/
Rb-79	5.E−05	—	—	St/ /
Rb-81m	1.E−04	—	—	St/ /
Rb-81	2.E−05	—	—	St/ /
Rb-82m	7.E−06	—	—	St/ /
Rb-83	4.E−07	—	—	St/ /
Rb-84	3.E−07	—	—	St/ /
Rb-86	3.E−07	—	—	St/ /
Rb-87	6.E−07	—	—	St/ /
Rb-88	3.E−05	—	—	St/ /
Rb-89	6.E−05	—	—	St/ /
Sr-80	5.E−06	—	5.E−06	St/ /St
Sr-81	3.E−05	—	3.E−05	St/ /St
Sr-83	3.E−06	—	2.E−06	St/ /St
Sr-85m	3.E−04	—	3.E-04	St/ /St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
As-70	—	8.E+05	—	/St/
As-71	—	7.E+04	—	/St/
As-72	—	2.E+04	—	/St/
As-73	—	3.E+04	—	/St/
As-74	—	1.E+04	—	/St/
As-76	—	2.E+04	—	/St/
As-77	—	8.E+04	—	/St/
As-78	—	3.E+05	—	/St/
Se-70	6.E+05	7.E+05	—	St/St/
Se-73m	2.E+06	2.E+06	—	St/St/
Se-73	2.E+05	2.E+05	—	St/St/
Se-75	1.E+04	9.E+03	—	St/St/
Se-79	1.E+04	9.E+03	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Se-81m	1.E+06	1.E+06	—	St/St/
Se-81	3.E+06	4.E+06	—	St/St/
Se-83	2.E+06	2.E+06	—	St/St/
Br-74m	6.E+05	6.E+05	—	St/St/
Br-74	1.E+06	1.E+06	—	St/St/
Br-75	7.E+05	8.E+05	—	St/St/
Br-76	7.E+04	7.E+04	—	St/St/
Br-77	4.E+05	3.E+05	—	St/St/
Br-80m	3.E+05	2.E+05	—	St/St/
Br-80	3.E+06	3.E+06	—	St/St/
Br-82	6.E+04	6.E+04	—	St/St/
Br-83	1.E+06	1.E+06	—	St/St/
Br-84	9.E+05	1.E+06	—	St/St/
Rb-79	2.E+06	—	—	St/ /
Rb-81m	5.E+06	—	—	St/ /
Rb-81	8.E+05	—	—	St/ /
Rb-82m	3.E+05	—	—	St/ /
Rb-83	2.E+04	—	—	St/ /
Rb-84	1.E+04	—	—	St/ /
Rb-86	1.E+04	—	—	St/ /
Rb-87	2.E+04	—	—	St/ /
Rb-88	1.E+06	—	—	St/ /
Rb-89	2.E+06	—	—	St/ /
Sr-80	2.E+05	—	2.E+05	St/ /St
Sr-81	1.E+06	—	1.E+06	St/ /St
Sr-83	1.E+05	—	5.E+04	St/ /St
Sr-85m	9.E+06	—	1.E+07	St/ /St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Sr-85	1.E−06	—	7.E−07	St/ /St
Sr-87m	5.E−05	—	6.E−05	St/ /St
Sr-89	3.E−07	—	6.E−08	St/ /St
Sr-90	8.E−09	—	2.E−09	BS/ /St
Sr-91	2.E−06	—	1.E−06	St/ /St
Sr-92	4.E−06	—	3.E−06	St/ /St
Y-86m	—	2.E−05	2.E−05	/St/St
Y-86	—	1.E−06	1.E−06	/St/St
Y-87	—	1.E−06	1.E−06	/St/St
Y-88	—	1.E−07	1.E−07	/St/St
Y-90m	—	5.E−06	5.E−06	/St/St
Y-90	—	3.E−07	2.E−07	/St/St
Y-90m	—	1.E−04	7.E−05	/St/St
Y-91	—	7.E−08	5.E−08	/St/St
Y-92	—	3.E−06	3.E−06	/St/St
Y-93	—	1.E−06	1.E−06	/St/St
Y-94	—	3.E−05	3.E−05	/St/St
Y-95	—	6.E−05	6.E−05	/St/St
Zr-86	2.E−06	1.E−06	1.E−06	St/St/St
Zr-88	9.E−08	2.E−07	1.E−07	St/St/St
Zr-89	2.E−06	1.E−06	1.E−06	St/St/St
Zr-93	3.E−09	1.E−08	2.E−08	BS/BS/BS
Zr-95	6.E−08	2.E−07	1.E−07	BS/St/St
Zr-97	8.E−07	6.E−07	5.E−07	St/St/St
Nb-88	—	1.E−04	9.E−05	/St/St
Nb-89 (66 min)	—	2.E−05	2.E−05	/St/St
Nb-89 (122 min)	—	8.E−06	7.E−06	/St/St
Nb-90	—	1.E−06	1.E−06	/St/St
Nb-93m	—	5.E−07	7.E−08	/St/St
Nb-94	—	8.E−08	6.E−09	/St/St
Nb-95m	—	1.E−06	9.E−07	/St/St
Nb-95	—	5.E−07	5.E−07	/St/St
Nb-96	—	1.E−06	1.E−06	/St/St
Nb-97	—	3.E−05	3.E−05	/St/St
Nb-98	—	2.E−05	2.E−05	/St/St
Mo-90	3.E−06	—	2.E−06	St/ /St
Mo-93m	7.E−06	—	6.E−06	St/ /St
Mo-93	2.E−06	—	7.E−08	St/ /St
Mo-99	1.E−06	—	6.E−07	St/ /St
Mo-101	6.E−05	—	6.E−05	St/ /St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Sr-85	4.E+04	—	2.E+04	St/ /St
Sr-87m	2.E+06	—	2.E+06	St/ /St
Sr-89	1.E+04	—	2.E+03	St/ /St
Sr-90	3.E+02	—	6.E+01	BS/ /St
Sr-91	9.E+04	—	5.E+04	St/ /St
Sr-92	1.E+05	—	1.E+05	St/ /St
Y-86m	—	9.E+05	9.E+05	/St/St
Y-86	—	5.E+04	5.E+04	/St/St
Y-87	—	5.E+04	5.E+04	/St/St
Y-88	—	4.E+03	4.E+03	/St/St
Y-90m	—	2.E+05	2.E+05	/St/St
Y-90	—	1.E+04	9.E+03	/St/St
Y-91m	—	4.E+06	3.E+06	/St/St
Y-91	—	3.E+03	2.E+03	/St/St
Y-92	—	1.E+05	1.E+05	/St/St
Y-93	—	4.E+04	4.E+04	/St/St
Y-94	—	1.E+06	1.E+06	/St/St
Y-95	—	2.E+06	2.E+06	/St/St
Zr-86	6.E+04	4.E+04	4.E+04	St/St/St
Zr-88	3.E+03	7.E+03	5.E+03	St/St/St
Zr-89	5.E+04	4.E+04	4.E+04	St/St/St
Zr-93	1.E+02	4.E+02	9.E+02	BS/BS/BS
Zr-95	2.E+03	6.E+03	4.E+03	BS/St/St
Zr-97	3.E+04	2.E+04	2.E+04	St/St/St
Nb-88	—	4.E+06	3.E+06	/St/St
Nb-89 (66 min)	—	6.E+05	6.E+05	/St/St
Nb-89 (122 min)	—	3.E+05	2.E+05	/St/St
Nb-90	—	4.E+04	4.E+04	/St/St
Nb-93m	—	2.E+04	3.E+03	/St/St
Nb-94	—	3.E+03	2.E+02	/St/St
Nb-95m	—	4.E+04	4.E+04	/St/St
Nb-95	—	2.E+04	2.E+04	/St/St
Nb-96	—	4.E+04	4.E+04	/St/St
Nb-97	—	1.E+06	1.E+06	/St/St
Nb-98	—	8.E+05	8.E+05	/St/St
Mo-90	1.E+05	—	7.E+04	St/ /St
Mo-93m	3.E+05	—	2.E+05	St/ /St
Mo-93	8.E+04	—	3.E+03	St/ /St
Mo-99	4.E+04	—	2.E+04	St/ /St
Mo-101	2.E+06	—	2.E+06	St/ /St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Tc-93m	7.E−05	1.E−04	—	St/St/
Tc-93	3.E−05	4.E−05	—	St/St/
Tc-94m	2.E−05	2.E−05	—	St/St/
Tc-94	8.E−06	1.E−05	—	St/St/
Tc-95m	2.E−06	8.E−07	—	St/St/
Tc-96m	1.E−04	1.E−04	—	St/St/
Tc-96	1.E−06	9.E−07	—	St/St/
Tc-97m	3.E−06	5.E−07	—	SW/St/
Tc-97	2.E−05	2.E−06	—	St/St/
Tc-98	7.E−07	1.E−07	—	St/St/
Tc-99m	6.E−05	1.E−04	—	St/St/
Tc-99	2.E−06	3.E−07	—	SW/St/
Tc-101	1.E−04	2.E−04	—	St/St/
Tc-104	3.E−05	4.E−05	—	St/St/
Ru-94	2.E−05	3.E−05	2.E−05	St/St/St
Ru-97	8.E−06	5.E−06	5.E−06	St/St/St
Ru-103	7.E−07	4.E−07	3.E−07	St/St/St
Ru-105	6.E−06	6.E−06	5.E−06	St/St/St
Ru-106	4.E−08	2.E−08	5.E−09	St/St/St
Rh-99m	2.E−05	3.E−05	3.E−05	St/St/St
Rh-99	1.E−06	9.E−07	8.E−07	St/St/St
Rh-100	2.E−06	2.E−06	2.E−06	St/St/St
Rh-101m	5.E−06	3.E−06	3.E−06	St/St/St
Rh-101	2.E−07	3.E−07	7.E−08	St/St/St
Rh-102m	2.E−07	2.E−07	5.E−08	St/St/St
Rh-102	4.E−08	7.E−08	2.E−08	St/St/St
Rh-103m	4.E−04	5.E−04	5.E−04	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Rh-105	5.E-06	3.E-06	2.E-06	St/St/St
Rh-106m	1.E-05	1.E-05	1.E-05	St/St/St
Rh-107	1.E-04	1.E-04	1.E-04	St/St/St
Pd-100	6.E-07	5.E-07	6.E-07	St/St/St
Pd-101	1.E-05	1.E-05	1.E-05	St/St/St
Pd-103	3.E-06	2.E-06	1.E-06	St/St/St
Pd-107	9.E-06	3.E-06	2.E-07	K/St/St
Pd-109	3.E-06	2.E-06	2.E-06	St/St/St
Ag-102	8.E-05	9.E-05	8.E-05	St/St/St
Ag-103	4.E-05	6.E-05	5.E-05	St/St/St
Ag-104m	4.E-05	5.E-05	5.E-05	St/St/St
Ag-104	3.E-05	6.E-05	6.E-05	St/St/St
Ag-105	4.E-07	4.E-07	7.E-07	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Tc-93m	2.E+06	5.E+06	—	St/St/
Tc-93	1.E+06	2.E+06	—	St/St/
Tc-94m	7.E+05	9.E+05	—	St/St/
Tc-94	3.E+05	4.E+05	—	St/St/
Tc-95m	8.E+04	3.E+04	—	St/St/
Tc-99	3.E+05	3.E+05	—	St/St/
Tc-96m	4.E+06	4.E+06	—	St/St/
Tc-96	5.E+04	3.E+04	—	St/St/
Tc-97m	1.E+05	2.E+04	—	SW/St/
Tc-97	6.E+05	9.E+04	—	St/St/
Tc-98	3.E+04	5.E+03	—	St/St/
Tc-99m	2.E+06	4.E+06	—	St/St/
Tc-99	8.E+04	1.E+04	—	SW/St/
Tc-101	5.E+06	6.E+06	—	St/St/
Tc-104	1.E+06	1.E+06	—	St/St/
Ru-94	7.E+05	1.E+06	9.E+05	St/St/St
Ru-97	3.E+05	2.E+05	2.E+05	St/St/St
Ru-103	3.E+04	2.E+04	1.E+04	St/St/St
Ru-105	2.E+05	2.E+05	2.E+05	St/St/St
Ru-106	1.E+03	8.E+02	2.E+02	St/St/St
Rh-99m	9.E+05	1.E+06	1.E+06	St/St/St
Rh-99	5.E+04	3.E+04	3.E+04	St/St/St
Rh-100	8.E+04	6.E+04	6.E+04	St/St/St
Rh-101m	2.E+05	1.E+05	1.E+05	St/St/St
Rh-101	8.E+03	1.E+04	2.E+03	St/St/St
Rh-102m	8.E+03	6.E+03	2.E+03	St/St/St
Rh-102	1.E+03	3.E+03	9.E+02	St/St/St
Rh-103m	2.E+07	2.E+07	2.E+07	St/St/St
Rh-105	2.E+05	1.E+05	9.E+04	St/St/St
Rh-106m	4.E+05	6.E+05	5.E+05	St/St/St
Rh-107	4.E+06	4.E+06	4.E+06	St/St/St
Pd-100	2.E+04	2.E+04	2.E+04	St/St/St
Pd-101	5.E+05	5.E+05	5.E+05	St/St/St
Pd-103	1.E+05	7.E+04	5.E+04	St/St/St
Pd-107	3.E+05	1.E+05	6.E+03	E /St/St
Pd-109	1.E+05	8.E+04	7.E+04	St/St/St
Ag-102	3.E+06	3.E+06	3.E+06	St/St/St
Ag-103	2.E+06	2.E+06	2.E+06	St/St/St
Ag-104m	2.E+06	2.E+06	2.E+06	St/St/St
Ag-104	1.E+06	2.E+06	2.E+06	St/St/St
Ag-105	2.E+04	3.E+04	3.E+04	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Ag-106m	3.E-07	4.E-07	4.E-07	St/St/St
Ag-106	7.E-05	8.E-05	8.E-05	St/St/St
Ag-108m	8.E-08	1.E-07	1.E-08	St/St/St
Ag-110m	6.E-08	8.E-08	4.E-08	St/St/St
Ag-111	7.E-07	4.E-07	4.E-07	L/St/St
Ag-112	3.E-06	4.E-06	4.E-06	St/St/St
Ag-115	4.E-05	4.E-05	3.E-05	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	(D / W / Y)
	(μCi/mL)	(μCi/mL)	(μCi/mL)	
Cd-104	3.E-05	5.E-05	5.E-05	St/St/St
Cd-107	2.E-05	2.E-05	2.E-05	St/St/St
Cd-109	1.E-08	5.E-08	5.E-08	K/K/St
Cd-113m	1.E-09	4.E-09	5.E-09	K/K/St
Cd-113	9.E-10	3.E-09	6.E-09	K/K/St
Cd-115m	2.E-08	5.E-08	6.E-08	K/St/St
Cd-115	6.E-07	5.E-07	6.E-07	St/St/St
Cd-117m	5.E-06	7.E-06	6.E-06	St/St/St
Cd-117	5.E-06	7.E-06	6.E-06	St/St/St
In-109	2.E-05	3.E-05	—	St/St/
In-110 (69 min)	2.E-05	2.E-05	—	St/St/
In-110 (5 h)	7.E-06	8.E-06	—	St/St/
In-111	3.E-06	3.E-06	—	St/St/
In-112	3.E-04	3.E-04	—	St/St
In-113m	6.E-05	8.E-05	—	St/St/
In-114m	3.E-08	4.E-08	—	St/St/
In-115m	2.E-05	2.E-05	—	St/St/
In-115	6.E-10	2.E-09	—	St/St/
In-116m	3.E-05	5.E-05	—	St/St/
In-117m	1.E-05	2.E-05	—	St/St/
In-117	7.E-05	9.E-05	—	St/St/
In-119m	5.E-05	6.E-05	—	St/St/
Sn-110	5.E-06	5.E-06	—	St/St/
Sn-111	9.E-05	1.E-04	—	St/St/
Sn-113	5.E-07	2.E-07	—	St/St/
Sn-117m	5.E-07	6.E-07	—	BS/St/
Sn-119m	1.E-06	4.E-07	—	St/St
Sn-121m	4.E-07	2.E-07	—	St/St/
Sn-121	6.E-06	5.E-06	—	St/St/
Sn-123m	5.E-05	6.E-05	—	St/St/
Sn-123	3.E-07	7.E-08	—	St/St/
Sn-125	4.E-07	2.E-07	—	St/St/
Sn-126	2.E-08	3.E-08	—	St/St/
Sn-127	8.E-06	8.E-06	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	(D / W / Y)
	(Bq/m³)	(Bq/m³)	(Bq/m³)	
Ag-106m	1.E+04	1.E+04	1.E+04	St/St/St
Ag-108	3.E+06	3.E+06	3.E+06	St/St/St
Ag-108m	3.E+03	4.E+03	4.E+02	St/St/St
Ag-110m	2.E+03	3.E+03	1.E+03	St/St/St
Ag-111	2.E+04	1.E+04	1.E+04	L/St/St
Ag-112	1.E+05	2.E+05	1.E+05	St/St/St
Ag-115	1.E+06	1.E+06	1.E+06	St/St/St
Cd-104	1.E+06	2.E+06	2.E+06	St/St/St
Cd-107	8.E+05	9.E+05	8.E+05	St/St/St
Cd-109	5.E+02	2.E+03	2.E+03	K /K /St
Cd-113m	4.E+01	1.E+02	2.E+02	K /K /St
Cd-113	4.E+01	1.E+02	2.E+02	K /K /St
Cd-115m	8.E+02	2.E+03	2.E+03	K /St/St
Cd-115	2.E+04	2.E+04	2.E+04	St/St/St
Cd-117m	2.E+05	3.E+05	2.E+05	St/St/St
Cd-117	2.E+05	3.E+05	2.E+05	St/St/St
In-109	7.E+05	1.E+06	—	St/St/
In-110 (69 min)	7.E+05	9.E+05	—	St/St/
In-110 (5 h)	3.E+05	3.E+05	—	St/St/
In-111	1.E+05	1.E+05	—	St/St/
In-112	1.E+07	1.E+07	—	St/St/
In-113m	2.E+06	3.E+06	—	St/St/
In-114m	1.E+03	2.E+03	—	St/St/
In-115m	7.E+05	7.E+05	—	St/St/
In-115	2.E+01	8.E+01	—	St/St/
In-116m	1.E+06	2.E+06	—	St/St/
In-117m	5.E+05	7.E+05	—	St/St/
In-117	3.E+06	3.E+06	—	St/St/
In-119m	2.E+06	2.E+06	—	St/St/
Sn-110	2.E+05	2.E+05	—	St/St/
Sn-111	4.E+06	4.E+06	—	St/St/
Sn-113	2.E+04	9.E+03	—	St/St/
Sn-117m	2.E+04	2.E+04	—	BS/St/
Sn-119m	4.E+04	1.E+04	—	St/St/
Sn-121m	1.E+04	9.E+03	—	St/St/
Sn-121	2.E+05	2.E+05	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Sn-123m	2.E+06	2.E+06	—	St/St/
Sn-123	1.E+04	3.E+03	—	St/St/
Sn-125	1.E+04	5.E+03	—	St/St/
Sn-126	9.E+02	1.E+03	—	St/St/
Sn-127	3.E+05	3.E+05	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Sn-128	1.E−05	1.E−05	—	St/St/
Sb-115	1.E−04	1.E−04	—	St/St/
Sb-116m	3.E−05	6.E−05	—	St/St/
Sb-116	1.E−04	1.E−04	—	St/St/
Sb-117	9.E−05	1.E−04	—	St/St/
Sb-118m	8.E−06	9.E−06	—	St/St/
Sb-119	2.E−05	1.E−05	—	St/St/
Sb-120 (16 min)	2.E−04	2.E−04	—	St/St/
Sb-120 (6 d)	9.E−07	6.E−07	—	St/St/
Sb-122	1.E−06	4.E−07	—	St/St/
Sb-124m	3.E−04	3.E−04	—	St/St/
Sb-124	4.E−07	1.E−07	—	St/St/
Sb-125	1.E−06	2.E−07	—	St/St/
Sb-126m	8.E−05	8.E−05	—	St/St/
Sb-126	4.E−07	2.E−07	—	St/St/
Sb-127	9.E−07	4.E−07	—	St/St/
Sb-128 (9 h)	2.E−06	1.E−06	—	St/St/
Sb-128 (10 min)	2.E−04	2.E−04	—	St/St/
Sb-129	4.E−06	4.E−06	—	St/St/
Sb-130	3.E−05	3.E−05	—	St/St/
Sb-131	1.E−05	1.E−05	—	T/T/
Te-116	9.E−06	1.E−05	—	St/St/
Te-121m	8.E−08	2.E−07	—	BS/St/
Te-121	2.E−06	1.E−06	—	St/St/
Te-123m	9.E−08	2.E−07	—	BS/St/
Te-123	8.E−08	2.E−07	—	BS/BS/
Te-125m	2.E−07	3.E−07	—	BS/St/
Te-127m	1.E−07	1.E−07	—	BS/St/
Te-127	9.E−06	7.E−06	—	St/St/
Te-129m	3.E−07	1.E−07	—	St/St/
Te-129	3.E−05	3.E−05	—	St/St/
Te-131m	2.E−07	2.E−07	—	T /T /
Te-131	2.E−06	2.E−06	—	T /T /
Te-132	8.E−08	9.E−08	—	T /T /
Te-133m	2.E−06	2.E−06	—	T /T /
Te-133	9.E−06	9.E−06	—	T /T /
Te-134	1.E−05	1.E−05	—	T /T /
I-120m	9.E−06	—	—	St/ /
I-120	4.E−06	—	—	T / /
I-121	7.E−06	—	—	T / /
I-123	3.E−06	—	—	T / /

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Sn-128	4.E+05	6.E+05	—	St/St/
Sb-115	4.E+06	5.E+06	—	St/St/
Sb-116m	1.E+06	2.E+06	—	St/St/
Sb-116	4.E+06	5.E+06	—	St/St/
Sb-117	3.E+06	4.E+06	—	St/St/
Sb-118m	3.E+05	3.E+05	—	St/St/
Sb-119	7.E+05	4.E+05	—	St/St/
Sb-120 (16 min)	7.E+06	8.E+06	—	St/St/
Sb-120 (6 d)	3.E+04	2.E+04	—	St/St/
Sb-122	4.E+04	2.E+04	—	St/St/
Sb-124m	1.E+07	9.E+06	—	St/St/
Sb-124	1.E+04	4.E+03	—	St/St/
Sb-125	4.E+04	8.E+03	—	St/St/
Sb-126m	3.E+06	3.E+06	—	St/St/
Sb-126	2.E+04	8.E+03	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Sb-127	3.E+04	1.E+04	—	St/St/
Sb-128 (9 h)	6.E+04	5.E+04	—	St/St/
Sb-128 (10 min)	6.E+06	7.E+06	—	St/St/
Sb-129	1.E+05	1.E+05	—	St/St/
Sb-130	1.E+06	1.E+06	—	St/St/
Sb-131	4.E+05	4.E+05	—	T /T /
Te-116	3.E+05	5.E+05	—	St/St/
Te-121m	3.E+03	6.E+03	—	BS/St/
Te-121	7.E+04	5.E+04	—	St/St/
Te-123m	3.E+03	8.E+03	—	BS/St/
Te-123	3.E+03	7.E+03	—	BS/BS/
Te-125m	7.E+03	1.E+04	—	BS/St/
Te-127m	4.E+03	4.E+03	—	BS/St/
Te-127	4.E+05	3.E+05	—	St/St/
Te-129m	1.E+04	4.E+03	—	St/St/
Te-129	1.E+06	1.E+06	—	St/St/
Te-131m	6.E+03	6.E+03	—	T /T /
Te-131	8.E+04	8.E+04	—	T /T /
Te-132	4.E+03	3.E+03	—	T /T /
Te-133m	8.E+04	8.E+04	—	T /T /
Te-133	4.E+05	4.E+05	—	T /T /
Te-134	4.E+05	4.E+05	—	T /T /
I-120m	3.E+05	—	—	St/ /
I-120	1.E+05	—	—	T / /
I-121	3.E+05	—	—	T / /
I-123	1.E+05	—	—	T / /

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
I-124	3.E−08	—	—	T/ /
I-125	3.E−08	—	—	T/ /
I-126	1.E−08	—	—	T/ /
I-128	5.E−05	—	—	St/ /
I-129	4.E−09	—	—	T/ /
I-130	3.E−07	—	—	T/ /
I-131	2.E−08	—	—	T/ /
I-132m	4.E−06	—	—	T/ /
I-132	3.E−06	—	—	T/ /
I-133	1.E−07	—	—	T/ /
I-134	2.E−05	—	—	E / /
I-135	7.E−07	—	—	T/ /
Cs-125	6.E−05	—	—	St/ /
Cs-127	4.E−05	—	—	St/ /
Cs-129	1.E−05	—	—	St/ /
Cs-130	8.E−05	—	—	St/ /
Cs-131	1.E−05	—	—	St/ /
Cs-132	2.E−06	—	—	St/ /
Cs-134m	6.E−05	—	—	St/ /
Cs-134	4.E−08	—	—	St/ /
Cs-135m	8.E−05	—	—	St/ /
Cs-135	5.E−07	—	—	St/ /
Cs-136	3.E−07	—	—	St/ /
Cs-137	7.E−08	—	—	St/ /
Cs-138	2.E−05	—	—	St/ /
Ba-126	6.E−06	—	—	St/ /
Ba-128	7.E−07	—	—	St/ /
Ba-131m	6.E−04	—	—	St/ /
Ba-131	3.E−06	—	—	St/ /
Ba-133m	4.E−06	—	—	St/ /
Ba-133	3.E−07	—	—	St/ /
Ba-135m	5.E−06	—	—	St/ /
Ba-139	1.E−05	—	—	St/ /
Ba-140	6.E−07	—	—	St/ /
Ba-141	3.E−05	—	—	St/ /
Ba-142	6.E−05	—	—	St/ /
La-131	5.E−05	7.E−05	—	St/St/
La-132	4.E−06	5.E−06	—	St/St/
La-135	4.E−05	4.E−05	—	St/St/
La-137	3.E−08	1.E−07	—	L /E /
La-138	2.E−09	6.E−09	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
I-124	1.E+03	—	—	T / /
I-125	1.E+03	—	—	T / /
I-126	5.E+02	—	—	T / /
I-128	2.E+06	—	—	St/ /
I-129	1.E+02	—	—	T / /
I-130	1.E+04	—	—	T / /
I-131	7.E+02	—	—	T / /
I-132m	1.E+05	—	—	T / /
I-132	1.E+05	—	—	T / /
I-133	4.E+03	—	—	T / /
I-134	7.E+05	—	—	St/ /
I-135	2.E+04	—	—	T / /
Cs-125	2.E+06	—	—	St/ /
Cs-127	2.E+06	—	—	St/ /
Cs-129	5.E+05	—	—	St/ /
Cs-130	3.E+06	—	—	St/ /
Cs-131	5.E+05	—	—	St/ /
Cs-132	6.E+04	—	—	St/ /
Cs-134m	2.E+06	—	—	St/ /
Cs-134	2.E+03	—	—	St/ /
Cs-135m	3.E+06	—	—	St/ /
Cs-135	2.E+04	—	—	St/ /
Cs-136	1.E+04	—	—	St/ /
Cs-137	2.E+03	—	—	St/ /
Cs-138	9.E+05	—	—	St/ /
Ba-126	2.E+05	—	—	St/ /
Ba-128	3.E+04	—	—	St/ /
Ba-131m	2.E+07	—	—	St/ /
Ba-131	1.E+05	—	—	St/ /
Ba-133m	1.E+05	—	—	St/ /
Ba-133	1.E+04	—	—	St/ /
Ba-135m	2.E+05	—	—	St/ /
Ba-139	5.E+05	—	—	St/ /
Ba-140	2.E+04	—	—	St/ /
Ba-141	1.E+06	—	—	St/ /
Ba-142	2.E+06	—	—	St/ /
La-131	2.E+06	3.E+06	—	St/St/
La-132	2.E+05	2.E+05	—	St/St/
La-135	2.E+06	2.E+06	—	St/St/
La-137	1.E+03	4.E+03	—	L /E /
La-138	5.E+01	2.E+02	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
La-140	6.E−07	5.E−07	—	St/St/
La-141	4.E−06	5.E−06	—	St/St/
La-142	9.E−06	1.E−05	—	St/St/
La-143	4.E−05	4.E−05	—	St/St/
Ce-134	—	3.E−07	3.E−07	/St/St/
Ce-135	—	2.E−06	2.E−06	/St/St/
Ce-137m	—	2.E−06	2.E−06	/St/St/
Ce-137	—	6.E−05	5.E−05	/St/St/
Ce-139	—	3.E−07	3.E−07	/St/St/
Ce-141	—	3.E−07	2.E−07	/St/St/
Ce-143	—	8.E−07	7.E−07	/St/St/
Ce-144	—	1.E−08	6.E−09	/St/St/
Pr-136	—	1.E−04	9.E−05	/St/St/
Pr-137	—	6.E−05	6.E−05	/St/St/
Pr-138m	—	2.E−05	2.E−05	/St/St/
Pr-139	—	5.E−05	5.E−05	/St/St/
Pr-142m	—	7.E−05	6.E−05	/St/St/
Pr-142	—	8.E−07	8.E−07	/St/St/
Pr-143	—	3.E−07	3.E−07	/St/St/
Pr-144	—	5.E−05	5.E−05	/St/St/
Pr-145	—	4.E−06	3.E−06	/St/St/
Pr-147	—	8.E−05	8.E−05	/St/St/
Nd-136	—	2.E−05	2.E−05	/St/St/
Nd-138	—	3.E−06	2.E−06	/St/St/
Nd-139m	—	7.E−06	6.E−06	/St/St/
Nd-139	—	1.E−04	1.E−04	/St/St/
Nd-141	—	3.E−04	3.E−04	/St/St/
Nd-147	—	4.E−07	3.E−07	/St/St/
Nd-149	—	1.E−05	1.E−05	/St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Nd-151	—	8.E−05	8.E−05	/St/St/
Pm-141	—	8.E−05	7.E−05	/St/St/
Pm-143	—	2.E−07	3.E−07	/St/St/
Pm-144	—	5.E−08	5.E−08	/St/St/
Pm-145	—	7.E−08	8.E−08	/St/St/
Pm-146	—	2.E−08	2.E−08	/St/St/
Pm-147	—	6.E−08	6.E−08	/St/St/
Pm-148m	—	1.E−07	1.E−07	/St/St/
Pm-148	—	2.E−07	2.E−07	/St/St/
Pm-149	—	8.E−07	8.E−07	/St/St/
Pm-150	—	8.E−06	7.E−06	/St/St/

Radionclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m [3])	(Bq/m [3])	(Bq/m [3])	(D / W / Y)
La-140	2.E+04	2.E+04	—	St/St/
La-141	1.E+05	2.E+05	—	St/St/
La-142	4.E+05	5.E+05	—	St/St/
La-143	2.E+06	1.E+06	—	St/St/
Ce-134	—	1.E+04	1.E+04	/St/St
Ce-135	—	6.E+04	5.E+04	/St/St
Ce-137m	—	7.E+04	6.E+04	/St/St
Ce-137	—	2.E+06	2.E+06	/St/St
Ce-139	—	1.E+04	1.E+04	/St/St
Ce-141	—	1.E+04	9.E+03	/St/St
Ce-143	—	3.E+04	2.E+04	/St/St
Ce-144	—	4.E+02	2.E+02	/St/St
Pr-136	—	4.E+06	4.E+06	/St/St
Pr-137	—	2.E+06	2.E+06	/St/St
Pr-138m	—	8.E+05	7.E+05	/St/St
Pr-139	—	2.E+06	2.E+06	/St/St
Pr-142m	—	3.E+06	2.E+06	/St/St
Pr-142	—	3.E+04	3.E+04	/St/St
Pr-143	—	1.E+04	1.E+04	/St/St
Pr-144	—	2.E+06	2.E+06	/St/St
Pr-145	—	1.E+05	1.E+05	/St/St
Pr-147	—	3.E+06	3.E+06	/St/St
Nd-136	—	9.E+05	8.E+05	/St/St
Nd-138	—	1.E+05	8.E+04	/St/St
Nd-139m	—	3.E+05	2.E+05	/St/St
Nd-139	—	5.E+06	4.E+06	/St/St
Nd-141	—	1.E+07	9.E+06	/St/St
Nd-147	—	2.E+04	1.E+04	/St/St
Nd-149	—	4.E+05	4.E+05	/St/St
Nd-151	—	3.E+06	3.E+06	
Pm-141	—	3.E+06	3.E+06	/St/St
Pm-143	—	9.E+03	1.E+04	/St/St
Pm-144	—	2.E+03	2.E+03	/St/St
Pm-145	—	3.E+03	3.E+03	/BS/St
Pm-146	—	8.E+02	7.E+02	/St/St
Pm-147	—	2.E+03	2.E+03	/BS/St
Pm-148m	—	5.E+03	5.E+03	/St/St
Pm-148	—	8.E+03	8.E+03	/St/St
Pm-149	—	3.E+04	8.E+04	/St/St
Pm-150	—	3.E+05	3.E+05	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Pm-151	—	2.E−06	1.E−06	/St/St/
Sm-141m	—	4.E−05	—	/St/
Sm-141	—	7.E−05	—	/St/
Sm-142	—	1.E−05	—	/St/
Sm-145	—	2.E−07	—	/St/
Sm-146	—	1.E−11	—	/BS/
Sm-147	—	2.E−11	—	/BS/
Sm-151	—	4.E−08	—	/BS/
Sm-153	—	1.E−06	—	/St/
Sm-155	—	9.E−05	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Sm-156	—	4.E−06	—	/St/
Eu-145	—	8.E−07	—	/St/
Eu-146	—	5.E−07	—	/St/
Eu-147	—	7.E−07	—	/St/
Eu-148	—	2.E−07	—	/St/
Eu-149	—	1.E−06	—	/St/
Eu-150 12 h)	—	3.E−06	—	/St/
Eu-150 (34 yr)	—	8.E−09	—	/St/
Eu-152m	—	3.E−06	—	/St/
Eu-152	—	1.E−08	—	/St/
Eu-154	—	8.E−09	—	/St/
Eu-155	—	4.E−08	—	/BS/
Eu-156	—	2.E−07	—	/St/
Eu-157	—	2.E−06	—	/St/
Eu-158	—	2.E−05	—	/St/
Gd-145	7.E−05	7.E−05	—	St/St/
Gd-146	5.E−08	1.E−07	—	St/St/
Gd-147	2.E−06	2.E−06	—	St/St/
Gd-148	3.E−12	1.E−11	—	BS/BS/
Gd-149	9.E−07	1.E−06	—	St/St/
Gd-151	2.E−07	5.E−07	—	BS/St/
Gd-152	4.E−12	2.E−11	—	BS/BS/
Gd-153	6.E−08	2.E−07	—	BS/St/
Gd-159	3.E−06	2.E−06	—	St/St/
Tb-147	-	1.E−05	—	/St/
Tb-149	-	3.E−07	—	/St/
Tb-150	-	9.E−06	—	/St/
Tb-151	-	4.E−06	—	/St/
Tb-153	-	3.E−06	—	/St/
Tb-154	-	2.E−06	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Pm-151	—	6.E+04	5.E+04	/St/St/
Sm-141m	—	2.E+06	—	/St/
Sm-141	—	3.E+06	—	/St/
Sm-142	—	4.E+05	—	/St/
Sm-145	—	8.E+03	—	/St/
Sm-146	—	6.E+01	—	/BS/
Sm-147	—	6.E+01	—	/BS/
Sm-151	—	2.E+03	—	/BS/
Sm-153	—	4.E+04	—	/St/
Sm-155	—	3.E+06	—	/St/
Sm-156	—	1.E+05	—	/St/
Eu-145	—	3.E+04	—	/St/
Eu-146	—	2.E+04	—	/St/
Eu-147	—	3.E+04	—	/St/
Eu-148	—	6.E+03	—	/St/
Eu-149	—	5.E+04	—	/St/
Eu-150 12 h)	—	1.E+05	—	/St/
Eu-150 (34 yr)	—	3.E+02	—	/St/
Eu-152m	—	1.E+05	—	/St/
Eu-152	—	4.E+02	—	/St/
Eu-154	—	3.E+02	—	/St/
Eu-155	—	1.E+03	—	/BS/
Eu-156	—	7.E+03	—	/St/
Eu-157	—	7.E+04	—	/St/
Eu-158	—	9.E+05	—	/St/
Gd-145	2.E+06	3.E+06	—	St/St/
Gd-146	2.E+03	4.E+03	—	St/St/
Gd-147	6.E+04	5.E+04	—	St/St/
Gd-148	1.E+01	5.E−01	—	BS/BS/
Gd-149	3.E+04	4.E+04	—	St/St/
Gd-151	6.E+03	2.E+04	—	BS/St/
Gd-152	2.E+01	6.E−01	—	BS/BS/
Gd-153	2.E+03	9.E+03	—	BS/St/
Gd-159	1.E+05	9.E+04	—	St/St/
Tb-147	-	5.E+05	—	/St/
Tb-149	-	1.E+04	—	/St/
Tb-150	-	3.E+05	—	/St/
Tb-151	-	1.E+05	—	/St/
Tb-153	-	1.E+05	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Tb-154		7.E+04	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Tb-155	—	3.E−06	—	/St/
Tb-156m (24 h)	—	3.E−06	—	/St/
Tb-156m (5 h)	—	1.E−05	—	/St/
Tb-156	—	6.E−07	—	/St/
Tb-157	—	1.E−07	—	/BS/
Tb-158	—	8.E−09	—	/St/
Tb-160	—	1.E−07	—	/St/
Tb-161	—	7.E−07	—	/St/
Dy-155	—	1.E−05	—	/St/
Dy-157	—	3.E−05	—	/St/
Dy-159	—	1.E−06	—	/St/
Dy-165	—	2.E−05	—	/St/
Dy-166	—	3.E−07	—	/St/
Ho-155	—	7.E−05	—	/St/
Ho-157	—	6.E−04	—	/St/
Ho-159	—	4.E−04	—	/St/
Ho-161	—	2.E−04	—	/St/
Ho-162m	—	1.E−04	—	/St/
Ho-162	—	1.E−03	—	/St/
Ho-164m	—	1.E−04	—	/St/
Ho-164	—	3.E−04	—	/St/
Ho-166m	—	3.E−09	—	/St/
Ho-166	—	7.E−07	—	/St/
Ho-167	—	2.E−05	—	/St/
Er-161	—	3.E−05	—	/St/
Er-165	—	8.E−05	—	/St/
Er-169	—	1.E−06	—	/St/
Er-171	—	4.E−06	—	/St/
Er-172	—	6.E−07	—	/St/
Tm-162	—	1.E−04	—	/St/
Tm-166	—	6.E−06	—	/St/
Tm-167	—	8.E−07	—	/St/
Tm-170	—	9.E−08	—	/St/
Tm-171	—	1.E−07	—	/BS/
Tm-172	—	5.E−07	—	/St/
Tm-173	—	5.E−06	—	/St/
Tm-175	—	1.E−04	—	/St/
Yb-162	—	1.E−04	1.E−04	/St/St
Yb-166	—	8.E−07	8.E−07	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³	(Bq/m³	(D / W / Y)
Tb-155	—	1.E+05	—	/St/
Tb-156m (24 h)	—	1.E+05	—	/St/
Tb-156m (5 h)	—	4.E+05	—	/St/
Tb-156	—	2.E+04	—	/St/
Tb-157	—	5.E+03	—	/Bs/
Tb-158	—	3.E+02	—	/St/
Tb-160	—	4.E+03	—	/St/
Tb-161	—	2.E+04	—	/St/
Dy-155	—	4.E+05	—	/St/
Dy-157	—	1.E+06	—	/St/
Dy-159	—	4.E+04	—	/St/
Dy-165	—	7.E+05	—	/St/
Dy-166	—	1.E+04	—	/St/
Ho-155	—	2.E+06	—	/St/
Ho-157	—	2.E+07	—	/St/
Ho-159	—	2.E+07	—	/St/
Ho-161	—	7.E+06	—	/St/
Ho-162m	—	4.E+06	—	/St/
Ho-162	—	4.E+07	—	/St/
Ho-164m	—	5.E+06	—	/St/
Ho-164	—	1.E+07	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³	(Bq/m³	(D / W / Y)
Ho-166m	—	1.E+02	—	/St/
Ho-166	—	3.E+04	—	/St/
Ho-167	—	9.E+05	—	/St/
Er-161	—	1.E+06	—	/St/
Er-165	—	3.E+06	—	/St/
Er-169	—	4.E+04	—	/St/
Er-171	—	2.E+05	—	/St/
Er-172	—	2.E+04	—	/St/
Tm-162	—	4.E+06	—	/St/
Tm-166	—	2.E+05	—	/St/
Tm-167	—	3.E+04	—	/St/
Tm-170	—	3.E+03	—	/St/
Tm-171	—	5.E+03	—	/BS/
Tm-172	—	2.E+04	—	/St/
Tm-173	—	2.E+05	—	/St/
Tm-175	—	4.E+06	—	/St/
Yb-162	—	5.E+06	4.E+06	/St/St
Yb-166	—	3.E+04	3.E+04	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Yb-167	—	3.E-04	3.E-04	/St/St
Yb-169	—	3.E-07	3.E-07	/St/St
Yb-175	—	1.E-06	1.E-06	/St/St
Yb-177	—	2.E-05	2.E-05	/St/St
Yb-178	—	2.E-05	1.E-05	/St/St
Lu-169	—	2.E-06	2.E-06	/St/St
Lu-170	—	9.E-07	8.E-07	/St/St
Lu-171	—	8.E-07	8.E-07	/St/St
Lu-172	—	5.E-07	5.E-07	/St/St
Lu-173	—	1.E-07	1.E-07	/Bt/St
Lu-174m	—	1.E-07	9.E-08	/Bt/St
Lu-174	—	5.E-08	7.E-08	/Bt/St
Lu-176m	—	1.E-05	1.E-05	/St/St
Lu-176	—	2.E-09	3.E-09	/Bt/St
Lu-177m	—	5.E-08	3.E-08	/Bt/St
Lu-177	—	9.E-07	9.E-07	/St/St
Lu-178m	—	8.E-05	7.E-05	/St/St
Lu-178	—	5.E-05	5.E-05	/St/St
Lu-179	—	8.E-06	6.E-06	/St/St
Hf-170	2.E-06	2.E-06	—	St/St/
Hf-172	4.E-09	2.E-08	—	Bt/BS/
Hf-173	5.E-06	5.E-06	—	St/St/
Hf-175	4.E-07	5.E-07	—	Bt/St/
Hf-177m	2.E-05	4.E-05	—	St/St/
Hf-178m	6.E-10	2.E-09	—	Bt/BS/
Hf-179m	1.E-07	3.E-07	—	Bt/St/
Hf-180m	9.E-06	1.E-05	—	St/St/
Hf-181	7.E-08	2.E-07	—	Bt/St/
Hf-182m	4.E-05	6.E-05	—	St/St/
Hf-182	3.E-10	1.E-09	—	Bt/BS/
Hf-183	2.E-05	2.E-05	—	St/St/
Hf-184	3.E-06	3.E-06	—	St/St/
Ta-172	—	5.E-05	4.E-05	/St/St
Ta-173	—	8.E-06	7.E-06	/St/St
Ta-174	—	4.E-05	4.E-05	/St/St
Ta-175	—	7.E-06	6.E-06	/St/St
Ta-176	—	5.E-06	5.E-06	/St/St
Ta-177	—	8.E-06	7.E-06	/St/St
Ta-178	—	4.E-05	3.E-05	/St/St
Ta-179	—	2.E-06	4.E-07	/St/St
Ta-180m	—	3.E-05	2.E-05	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Yb-167	—	1.E+07	1.E+07	/St/St
Yb-169	—	1.E+04	1.E+04	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m ^{3})	(Bq/m ^{3})	(Bq/m ^{3})	(D / W / Y)
Yb-175	—	5.E+04	5.E+04	/St/St
Yb-177	—	8.E+05	7.E+05	/St/St
Yb-178	—	6.E+05	6.E+05	/St/St
Lu-169	—	7.E+04	7.E+04	/St/St
Lu-170	—	3.E+04	3.E+04	/St/St
Lu-171	—	3.E+04	3.E+04	/St/St
Lu-172	—	2.E+04	2.E+04	/St/St
Lu-173	—	4.E+03	4.E+03	/BS/St
Lu-174m	—	4.E+03	3.E+03	/BS/St
Lu-174	—	2.E+03	2.E+03	/BS/St
Lu-176m	—	4.E+05	4.E+05	/St/St
Lu-176	—	7.E+01	1.E+02	/BS/St
Lu-177m	—	2.E+03	1.E+03	/BS/St
Lu-177	—	3.E+04	3.E+04	/St/St
Lu-178m	—	3.E+06	3.E+06	/St/St
Lu-178	—	2.E+06	2.E+06	/St/St
Lu-179	—	3.E+05	2.E+05	/St/St
Hf-170	9.E+04	7.E+04	—	St/St/
Hf-172	1.E+02	6.E+02	—	BS/BS/
Hf-173	2.E+05	2.E+05	—	St/St/
Hf-175	2.E+04	2.E+04	—	BS/St/
Hf-177m	9.E+05	1.E+06	—	St/St/
Hf-178m	2.E+01	8.E+01	—	BS/BS/
Hf-179m	5.E+03	9.E+03	—	BS/St/
Hf-180m	3.E+05	4.E+05	—	St/St/
Hf-181	3.E+03	7.E+03	—	BS/St/
Hf-182m	1.E+06	2.E+06	—	St/St/
Hf-182	1.E+01	5.E+01	—	BS/BS/
Hf-183	7.E+05	8.E+05	—	St/St/
Hf-184	1.E+05	1.E+05	—	St/St/
Ta-172	—	2.E+06	2.E+06	/St/St
Ta-173	—	3.E+05	3.E+05	/St/St
Ta-174	—	1.E+06	1.E+06	/St/St
Ta-175	—	3.E+05	2.E+05	/St/St
Ta-176	—	2.E+05	2.E+05	/St/St
Ta-177	—	3.E+05	3.E+05	/St/St
Ta-178	—	1.E+06	1.E+06	/St/St
Ta-179	—	8.E+04	1.E+04	/St/St
Ta-180m	—	1.E+06	9.E+05	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCimL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Ta-180	—	2.E-07	1.E-08	/St/St
Ta-182m	—	2.E-04	2.E-04	/St/St
Ta-182	—	1.E-07	6.E-08	/St/St
Ta-183	—	5.E-07	4.E-07	/St/St
Ta-184	—	2.E-06	2.E-06	/St/St
Ta-185	—	3.E-05	3.E-05	/St/St
Ta-186	—	1.E-04	9.E-05	/St/St
W-176	2.E-05	—	—	St/ /
W-177	4.E-05	—	—	St/ /
W-178	8.E-06	—	—	St/ /
W-179	7.E-04	—	—	St/ /
W-181	1.E-05	—	—	St/ /
W-185	3.E-06	—	—	St/ /
W-187	4.E-06	—	—	St/ /
W-188	5.E-07	—	—	St/ /
Re-177	1.E-04	2.E-04	—	St/St/
Re-178	1.E-04	1.E-04	—	St/St/
Re-181	4.E-06	4.E-06	—	St/St/
Re-182 (64 h)	1.E-06	9.E-07	—	St/St/
Re-182 (12 h)	5.E-06	6.E-07	—	St/St/
Re-184m	1.E-06	2.E-07	—	St/St/
Re-184	2.E-06	6.E-07	—	St/St/
Re-186m	7.E-07	6.E-08	—	SW/St/
Re-186	1.E-06	7.E-07	—	St/St/
Re-187	3.E-04	4.E-05	—	SW/St/
Re-188m	6.E-05	6.E-05	—	St/St/
Re-188	1.E-06	1.E-06	—	St/St/
Re-189	2.E-06	2.E-06	—	St/St/
Os-180	2.E-04	2.E-04	2.E-04	St/St/St
Os-181	2.E-05	2.E-05	2.E-05	St/St/St
Os-182	2.E-06	2.E-06	2.E-06	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCimL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Os-185	2.E-07	2.E-07	2.E-07	St/St/St
Os-189m	1.E-04	9.E-04	7.E-05	St/St/St
Os-191m	1.E-05	9.E-06	7.E-06	St/St/St
Os-191	9.E-07	7.E-07	6.E-07	St/St/St
Os-193	2.E-06	1.E-06	1.E-06	St/St/St
Os-194	2.E-08	2.E-08	3.E-09	St/St/St
Ir-182	6.E-05	6.E-05	5.E-05	St/St/St
Ir-184	1.E-05	1.E-05	1.E-05	St/St/St
Ir-185	5.E-06	5.E-06	4.E-06	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Ta-180	—	7.E+03	4.E+02	/St/St
Ta-182m	—	8.E+06	6.E+06	/St/St
Ta-182	—	5.E+03	2.E+03	/St/St
Ta-183	—	2.E+04	2.E+04	/St/St
Ta-184	—	8.E+04	7.E+04	/St/St
Ta-185	—	1.E+06	1.E+06	/St/St
Ta-186	—	4.E+06	3.E+06	/St/St
W-176	8.E+05	—	—	St/ /
W-177	1.E+06	—	—	St/ /
W-178	3.E+05	—	—	St/ /
W-179	3.E+07	—	—	St/ /
W-181	5.E+05	—	—	St/ /
W-185	1.E+05	—	—	St/ /
W-187	2.E+05	—	—	St/ /
W-188	2.E+04	—	—	St/ /
Re-177	4.E+06	5.E+06	—	St/St/
Re-178	4.E+06	4.E+06	—	St/St/
Re-181	1.E+05	1.E+05	—	St/St/
Re-182 (64 h)	4.E+04	3.E+04	—	St/St/
Re-182 (12 h)	2.E+05	2.E+05	—	St/St/
Re-184m	5.E+04	7.E+03	—	St/St/
Re-184	6.E+04	2.E+04	—	St/St/
Re-186m	3.E+04	2.E+03	—	SW/St/
Re-186	5.E+04	3.E+04	—	St/St/
Re-187	1.E+07	2.E+06	—	SW/St/
Re-188m	2.E+06	2.E+06	—	St/St/
Re-188	4.E+04	4.E+04	—	St/St/
Re-189	8.E+04	7.E+04	—	St/St/
Os-180	6.E+06	8.E+06	7.E+06	St/St/St
Os-181	7.E+05	7.E+05	7.E+05	St/St/St
Os-182	9.E+04	7.E+04	6.E+04	St/St/St
Os-185	8.E+03	1.E+04	1.E+04	St/St/St
Os-189m	4.E+06	3.E+06	3.E+06	St/St/St
Os-191m	4.E+05	3.E+05	3.E+05	St/St/St
Os-191	3.E+04	3.E+04	2.E+04	St/St/St
Os-193	7.E+04	5.E+04	4.E+04	St/St/St
Os-194	7.E+02	9.E+02	1.E+02	St/St/St
Ir-182	2.E+06	2.E+06	2.E+06	St/St/St
Ir-184	4.E+05	5.E+05	4.E+05	St/St/St
Ir-185	2.E+05	2.E+05	2.E+05	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Ir-186	3.E-06	3.E-06	2.E-06	St/St/St
Ir-187	1.E-05	1.E-05	1.E-05	St/St/St
Ir-188	2.E-06	2.E-06	1.E-06	St/St/St
Ir-189	2.E-06	2.E-06	2.E-06	St/St/St
Ir-190m	8.E-05	9.E-05	8.E-05	St/St/St
Ir-190	4.E-07	4.E-07	4.E-07	St/St/St
Ir-192m	4.E-08	9.E-08	6.E-09	St/St/St
Ir-192	1.E-07	2.E-07	9.E-08	St/St/St
Ir-194m	4.E-08	7.E-08	4.E-08	St/St/St
Ir-194	1.E-06	8.E-07	8.E-07	St/St/St
Ir-195m	1.E-05	1.E-05	9.E-06	St/St/St
Ir-195	2.E-05	2.E-05	2.E-05	St/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Pt-186	2.E-05	—	—	St/ /
Pt-188	7.E-07	—	—	St/ /
Pt-189	1.E-05	—	—	St/ /
Pt-191	3.E-06	—	—	St/ /
Pt-193m	2.E-06	—	—	St/ /
Pt-193	1.E-05	—	—	St/ /
Pt-195m	2.E-06	—	—	St/ /
Pt-197m	2.E-05	—	—	St/ /
Pt-197	4.E-06	—	—	St/ /
Pt-199	6.E-05	—	—	St/ /
Pt-200	1.E-06	—	—	St/ /
Au-193	1.E-05	9.E-06	8.E-06	St/St/St
Au-194	3.E-06	2.E-06	2.E-06	St/St/St
Au-195	5.E-06	6.E-07	2.E-07	St/St/St
Au-198m	1.E-06	5.E-07	5.E-07	St/St/St
Au-198	2.E-06	8.E-07	7.E-07	St/St/St
Au-199	4.E-06	2.E-06	2.E-06	St/St/St
Au-200m	1.E-06	1.E-06	1.E-06	St/St/St
Au-200	3.E-05	3.E-05	3.E-05	St/St/St
Au-201	9.E-05	1.E-04	9.E-05	St/St/St
Hg-193m (Org)	6.E-06	—	—	St/ /
Hg-193m (Inorg)	4.E-06	3.E-06	—	St/St/
Hg-193m (Vapor)	—	4.E-06	—	/St/
Hg-193 (Org)	3.E-05	—	—	St/ /
Hg-193 (Inorg)	2.E-05	2.E-05	—	St/St/
Hg-193 (Vapor)	—	1.E-05	—	/St/
Hg-194 (Org)	1.E-08	—	—	St/ /
Hg-194 (Inorg)	2.E-08	5.E-08	—	St/St/
Hg-194 (Vapor)	—	1.E-08	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	Bq/m³	Bq/m³	Bq/m³	(D / W / Y)
Ir-186	1.E+05	1.E+05	9.E+04	St/St/St
Ir-187	5.E+05	5.E+05	4.E+05	St/St/St
Ir-188	7.E+04	6.E+04	5.E+04	St/St/St
Ir-189	7.E+04	6.E+04	6.E+04	St/St/St
Ir-190m	3.E+06	3.E+06	3.E+06	St/St/St
Ir-190	1.E+04	2.E+04	1.E+04	St/St/St
Ir-192m	1.E+03	3.E+03	3.E+03	St/St/St
Ir-192	4.E+03	6.E+03	3.E+03	St/St/St
Ir-194m	2.E+03	3.E+03	2.E+03	St/St/St
Ir-194	5.E+04	3.E+04	3.E+04	St/St/St
Ir-195m	4.E+05	4.E+05	3.E+05	St/St/St
Ir-195	6.E+05	8.E+05	7.E+05	St/St/St
Pt-186	6E+05	—	—	St/ /
Pt-188	3.E+04	—	—	St/ /
Pt-189	4.E+05	—	—	St/ /
Pt-191	1.E+05	—	—	St/ /
Pt-193m	9.E+04	—	—	St/ /
Pt-193	4.E+05	—	—	St/ /
Pt-195m	7.E+04	—	—	St/ /
Pt-197m	7.E+05	—	—	St/ /
Pt-197	2.E+05	—	—	St/ /
Pt-199	2.E+06	—	—	St/ /
Pt-200	5.E+04	—	—	St/ /
Au-193	4.E+05	3.E+05	3.E+05	St/St/St
Au-194	1.E+05	9.E+04	8.E+04	St/St/St
Au-195	2.E+05	2.E+04	6.E+03	St/St/St
Au-198m	4.E+04	2.E+04	2.E+04	St/St/St
Au-198	6.E+04	3.E+04	3.E+04	St/St/St
Au-199	1.E+05	6.E+04	6.E+04	St/St/St
Au-200m	5.E+04	4.E+04	4.E+04	St/St/St
Au-200	1.E+06	1.E+06	1.E+06	St/St/St
Au-201	3.E+06	4.E+06	4.E+06	St/St/St
Hg-193m (Org)	2.E+05	—	—	St/ /
Hg-193m (Inorg)	1.E+05	1.E+05	—	St/St/
Hg-193m (Vapor)	—	1.E+05	—	/St/
Hg-193 (Org)	1.E+06	—	—	St/ /
Hg-193 (Inorg)	7.E+05	6.E+05	—	St/St/
Hg-193 (Vapor)	—	5.E+05	—	/St/
Hg-194 (Org)	4.E+02	—	—	St/ /
Hg-194 (Inorg)	7.E+02	2.E+03	—	St/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	Bq/m³	Bq/m³	Bq/m³	(D / W / Y)
Hg-194 (Vapor)	—	5.E+02	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Hg-195M (Org)	3.E-06	—	—	St/ /
Hg-195m (Inorg)	2.E-06	2.E-06	—	St/St/
Hg-195M (Vapor)	—	2.E-06	—	/St/
Hg-195 (Org)	2.E-05	—	—	St/ /
Hg-195 (Inorg)	1.E-05	1.E-05	—	St/St/
Hg-195 (Vapor)	—	1.E-05	—	/St/
Hg-197M (Org)	4.E-06	—	—	St/ /
Hg-197M (Inorg)	3.E-06	2.E-06	—	St/St/
Hg-197M (Vapor)	—	2.E-06	—	/St/
Hg-197 (Org)	6.E-06	—	—	St/ /
Hg-197(Inorg)	5.E-06	4.E-06	—	St/St
Hg-197 (Vapor)	—	4.E-06	—	/St/
Hg-199m (Org)	7.E-05	—	—	St/ /
Hg-199m (Inorg)	6.E-05	7.E-05	—	St/ST/
Hg-199m (Vapor)	—	3.E-05	—	/St/
Hg-203 (Org)	3.E-07	—	—	St/ /
Hg-203 (Inorg)	5.E-07	5.E-07	—	St/St/
Hg-203 (Vapor)	—	3.E-07	—	/St/
Tl-194m	6.E-05	—	—	St/ /
Tl-194	3.E-04	—	—	St/ /
Tl-195	5.E-05	—	—	St/ /
Tl-197	5.E-05	—	—	St/ /
Tl-198m	2.E-05	—	—	St/ /
Tl-198	1.E-05	—	—	St/ /
Tl-199	3.E-05	—	—	St/ /
Tl-200	5.E-06	—	—	St/ /
Tl-201	9.E-06	—	—	St/ /
Tl-202	2.E-06	—	—	St/ /
Tl-204	9.E-07	—	—	St/ /
Pb-195m	8.E-05	—	—	St/ /
Pb-198	3.E-05	—	—	St/ /
Pb-199	3.E-05	—	—	St/ /
Pb-200	3.E-06	—	—	St/ /
Pb-201	9.E-06	—	—	St/ /
Pb-202m	1.E-05	—	—	St/ /
Pb-202	2.E-08	—	—	St/ /
Pb-203	4.E-06	—	—	St/ /
Pb-205	6.E-07	—	—	St/ /
Pb-209	2.E-05	—	—	St/ /
Pb-210	1.E-10	—	—	BS/ /
Pb-211	3.E-07	—	—	St/ /
Pb-212	1.E-08	—	—	St/ /

Radionuclide	Inhaled air—Lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Hg-195m (Org)	9.E+04	—	—	St/ /
Hg-195m (Inorg)	8.E+04	6.E+04	—	St/St/
Hg-195m (Vapor)	—	6.E+04	—	/St/
Hg-195 (Org)	7.E+05	—	—	St/ /
Hg-195 (Inorg)	5.E+05	5.E+05	—	St/St/
Hg-195 (Vapor)	—	5.E+05	—	/St/
Hg-197m (Org)	1.E+05	—	—	St/ /
Hg-197m (Inorg)	1.E+05	8.E+04	—	St/St/
Hg-197m (Vapor)	—	8.E+04	—	/St/
Hg-197 (Org)	2.E+05	—	—	St/ /
Hg-197 (Inorg)	2.E+05	1.E+05	—	St/St/
Hg-197 (Vapor)	—	1.E+05	—	/St/
Hg-199m (Org)	3.E+06	—	—	St/ /
Hg-199m (Inorg)	2.E+06	3.E+06	—	St/St/
Hg-199m (Vapor)	—	1.E+06	—	/St/
Hg-203 (Org)	1.E+04	—	—	St/ /
Hg-203 (Inorg)	2.E+04	2.E+04	—	St/St/
Hg-203 (Vapor)	—	1.E+04	—	/St/

Radionuclide	Inhaled air—Lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m [3])	(Bq/m [3])	(Bq/m [3])	(D / W / Y)
Tl-194m	2.E+06	—	—	St/ /
Tl-194	9.E+06	—	—	St/ /
Tl-195	2.E+06	—	—	St/ /
Tl-197	2.E+06	—	—	St/ /
Tl-198m	9.E+05	—	—	St/ /
Tl-198	5.E+05	—	—	St/ /
Tl-199	1.E+06	—	—	St/ /
Tl-200	2.E+05	—	—	St/ /
Tl-201	3.E+05	—	—	St/ /
Tl-202	8.E+04	—	—	St/ /
Tl-204	3.E+04	—	—	St/ /
Pb-195m	3.E+06	—	—	St/ /
Pb-198	1.E+06	—	—	St/ /
Pb-199	1.E+06	—	—	St/ /
Pb-200	1.E+05	—	—	St/ /
Pb-201	3.E+05	—	—	St/ /
Pb-202m	4.E+05	—	—	St/ /
Pb-202	6.E+02	—	—	St/ /
Pb-203	2.E+05	—	—	St/ /
Pb-205	2.E+04	—	—	St/ /
Pb-209	9.E+05	—	—	St/ /
Pb-210	4.E+00	—	—	BS/ /
Pb-211	1.E+04	—	—	St/ /
Pb-212	5.E+02	—	—	St/ /

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Pb-214	3.E-07	—	—	St/ /
Bi-200	3.E-05	4.E-05	—	St/St/
Bi-201	1.E-05	2.E-05	—	St/St/
Bi-202	2.E-05	3.E-05	—	St/St/
Bi-203	3.E-06	2.E-06	—	St/St/
Bi-205	1.E-06	5.E-07	—	St/St/
Bi-206	6.E-07	4.E-07	—	St/St/
Bi-207	7.E-07	2.E-07	—	St/St/
Bi-210m	2.E-09	3.E-10	—	K/St/
Bi-210	1.E-07	1.E-08	—	K/St/
Bi-212	1.E-07	1.E-07	—	St/St/
Bi-213	1.E-07	2.E-07	—	St/St/
Bi-214	3.E-07	4.E-07	—	St/St/
Po-203	3.E-05	4.E-05	—	St/St/
Po-205	2.E-05	3.E-05	—	St/St/
Po-207	1.E-05	1.E-05	—	St/St/
Po-210	3.E-10	3.E-10	—	E/St/
At-207	1.E-06	9.E-07	—	St/St/
At-211	3.E-08	2.E-08	—	St/St/
Rn-220	8.E-09 [4]	(*)	(*)	(*)
Rn-222	3.E-08 [4]	(*)	(*)	(*)
Fr-222	2.E-07	—	—	St/ /
Fr-223	3.E-07	—	—	St/ /
Ra-223	—	3.E-10	—	/St/
Ra-224	—	7.E-10	—	/St/
Ra-225	—	3.E-10	—	/St/
Ra-226	—	3.E-10	—	/St/
Ra-227	—	6.E-06	—	/BS/
Ra-228	—	5.E-10	—	/St/
Ac-224	1.E-08	2.E-08	2.E-08	BS/St/St
Ac-225	1.E-10	3.E-10	3.E-10	BS/St/St
Ac-226	1.E-09	2.E-09	2.E-09	BS/St/St
Ac-227	2.E-13	7.E-13	2.E-12	BS/St/St
Ac-228	4.E-09	2.E-08	2.E-08	BS/St/St
Th-226	—	7.E-08	6.E-08	/St/St
Th-227	—	1.E-10	1.E-10	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m [3])	(Bq/m [3])	(Bq/m [3])	(D / W / Y)
Pb-214	1E+04	—	—	St/ /
Bi-200	1.E+06	2.E+06	—	St/St/
Bi-201	4.E+05	6.E+05	—	St/St/
Bi-202	6.E+05	1.E+06	—	St/St/
Bi-203	1.E+05	9.E+04	—	St/St/
Bi-205	4.E+04	2.E+04	—	St/St/
Bi-206	2.E+04	1.E+04	—	St/St/
Bi-207	3.E+04	5.E+03	—	St/St/
Bi-210m	7.E+01	1.E+01	—	K/St/
Bi-210	4.E+03	4.E+02	—	K/St/
Bi-212	4.E+03	4.E+03	—	St/St/
Bi-213	5.E+03	5.E+03	—	St/St/
Bi-214	1.E+04	1.E+04	—	St/St/
Po-203	1.E+06	1.E+06	—	St/St/
Po-205	6.E+05	1.E+06	—	St/St/
Po-207	4.E+05	4.E+05	—	St/St/
Po-210	1.E+01	1.E+01	—	13/St/
At-207	4.E+04	3.E+04	—	St/St/
At-211	1.E+03	8.E+02	—	St/St/
Rn-220	3.E+02 [4]	(*)	(*)	(*)
Rn-222	1.E+03 [4]	(*)	(*)	(*)
Fr-222	7.E+03	—	—	St/ /
Fr-223	1.E+04	—	—	St/ /
Ra-223	—	1.E+01	—	/St/
Ra-224	—	3.E+01	—	/St/
Ra-225	—	1.E+01	—	/St/
Ra-226	—	1.E+01	—	/St/ /
Ra-227	—	2.E+05	—	/BS/
Ra-228	—	2.E+01	—	/St/
Ac-224	4.E+02	6.E+02	7.E+02	St/St/St
Ac-225	4.E+00	1.E+01	1.E+01	BS/St/St
Ac-226	5.E+01	6.E+01	7.E+01	BS/St/St
Ac-227	7.E+03	3.E+02	6.E-02	BS/BS/St
Ac-228	2.E+02	6.E+02	7.E+02	BS/BS/St
Th-226	—	2.E+03	2.E+03	/St/St
Th-227	—	5.E+00	5.E+00	/St/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Th-228	—	4.E-12	7.E-12	/BS/St
Th-229	—	4.E-13	1.E-12	/BS/BS
Th-230	—	3.E-12	7.E-12	/BS/BS
Th-231	—	3.E-6	3.E-06	/St/St
Th-232	—	5.E-13	1.E-12	/BS/BS
Th-234	—	9.E-08	6.E-08	/St/St
Pa-227	—	5.E-08	4.E-08	/St/St
Pa-228	—	5.E-09	5.E-09	/BS/St
Pa-230	—	2.E-09	1.E-09	/St/St
Pa-231	—	7.E-13	2.E-12	/BS/BS
Pa-232	—	9.E-09	2.E-08	/BS/BS
Pa-233	—	3.E-07	2.E-07	/St/St
Pa-234	—	3.E-06	3.E-06	/St/St
U-230	2.E-10	1.E-10	1.E-10	BS/St/St
U-231	3.E-06	2.E-06	2.E-06	St/St/St
U-232	9.E-11	2.E-10	3.E-12	BS/St/St
U-233	5.E-10	3.E-10	2.E-11	BS/St/St
U-234	5.E-10	3.E-10	2.E-11	BS/St/St
U-235	6.E-10	3.E-10	2.E-11	BS/St/St
U-236	6.E-10	3.E-10	2.E-11	BS/St/St
U-237	1.E-06	7.E-07	6.E-07	St/St/St
U-238	6.E-10	3.E-10	2.E-11	BS/St/St
U-239	8.E-05	7.E-05	6.E-05	St/St/St
U-240	2.E-06	1.E-06	1.E-06	St/St/St
Np-232	—	1.E-06 [5]	—	/BS/
Np-233	—	1.E-03 [5]	—	/St/
Np-234	—	1.E-06 [5]	—	/St/
Np-235	—	5.E-07 [5]	—	/BS/
Np-236 (1.E+05 yr)	—	1.E-11 [5]	—	/BS/
Np-236 (22 h)	—	2.E-08 [5]	—	/BS/
Np-237	—	2.E-12 [5]	—	/BS/
Np-238	—	4.E-08 [5]	—	/BS/
Np-239	—	1.E-06 [5]	—	/St/
Np-240	—	3.E-05 [5]	—	/St/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Pu-234	—	9.E-08 [5]	8.E-08 [5]	/St/St
Pu-235	—	1.E-03 [5]	1.E-03 [5]	/St/St
Pu-236	—	7.E-12 [5]	1.E-11 [5]	/BS/St
Pu-237	—	1.E-06 [5]	1.E-06 [5]	/St/St
Pu-238	—	3.E-12 [5]	7.E-12 [5]	/BS/BS
Pu-239	—	2.E-12 [5]	6.E-12 [5]	/BS/BS

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Th-228	—	2.E−01	3.E−01	/BS/St
Th-229	—	1.E−02	4.E−02	/BS/BS
Th-230	—	9.E−02	2.E−01	/BS/BS
Th-231	—	1.E+05	1.E+05	/St/St
Th-232	—	2.E−02	4.E−02	/BS/BS
Th-234	—	3.E+03	2.E+03	/St/St
Pa-227	—	2.E+03	2.E+03	/St/St
Pa-228	—	2.E+02	2.E+02	/BS/St
Pa-230	—	7.E+01	5.E+01	/St/St
Pa-231	—	2.E−02	6.E−02	/BS/BS
Pa-232	—	3.E+02	9.E+02	/BS/BS
Pa-233	—	1.E+04	9.E+03	/St/St
Pa-234	—	1.E+05	1.E+05	/St/St
U-230	6.E+00	5.E+00	4.E+00	BS/St/St
U-231	1.E+05	9.E+04	7.E+04	St/St/St
U-232	3.E+00	6.E+00	1.E−01	BS/St/St
U-233	2.E+01	1.E+01	6.E−01	BS/St/St
U-234	2.E+01	1.E+01	6.E−01	BS/St/St
U-235	2.E+01	1.E+01	6.E−01	BS/St/St
U-236	2.E+01	1.E+01	6.E−01	BS/St/St
U-237	4.E+04	3.E+04	2.E+04	St/St/St
U-238	2.E+01	1.E+01	6.E−01	BS/St/St
U-239	3.E+06	3.E+06	2.E+06	St/St/St
U-240	6.E+04	4.E+04	4.E+04	St/St/St
Np-232	—	4.E+04 [5]	—	/BS/
Np-233	—	5.E+07 [5]	—	/St/
Np-234	—	4.E+04 [5]	—	/St/
Np-235	—	2.E+04 [5]	—	/BS/
Np-236 (1.E+05 yr)	—	4.E−01 [5]	—	/BS/
Np-236 (22 h)	—	6.E+02 [5]	—	/BS/
Np-237	—	9.E−02 [5]	—	/BS/
Np-238	—	1.E+03 [5]	—	/BS/
Np-239	—	4.E+04 [5]	—	/St/
Np-240	—	1.E+06 [5]	—	/St/
Pu-234	—	3.E+03 [5]	3.E+03 [5]	/St/St
Pu-235	—	5.E+07 [5]	4.E+07 [5]	/St/St
Pu-236	—	3.E−01 [5]	6.E−01 [5]	/BS/St
Pu-237	—	5.E+04 [5]	5.E+04 [5]	/St/St
Pu-238	—	9.E−02 [5]	3.E−01 [5]	/BS/E
Pu-239	—	8.E−02 [5]	2.E−01 [5]	/BS/BS

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Pu-240	—	2.E-12 [5]	6.E-12 [5]	/BS/BS
Pu-241	—	1.E-10 [5]	3.E-10 [5]	/BS/BS
Pu-242	—	2.E-12 [5]	6.E-12 [5]	/BS/BS
Pu-243	—	1.E-05 [5]	1.E-05 [5]	/St/St
Pu-244	—	2.E-12 [5]	6.E-12 [5]	/BS/BS
Pu-245	—	2.E-06 [5]	2.E-06 [5]	/St/St
Am-237	—	1.E-04 [5]	—	/St/
Am-238	—	1.E-06 [5]	—	/BS/
Am-239	—	5.E-06 [5]	—	/St/
Am-240	—	1.E-06 [5]	—	/St/
Am-241	—	2.E-12 [5]	—	/BS/
Am-242m	—	2.E-12 [5]	—	/BS/
Am-242	—	3.E-08 [5]	—	/BS/
Am-243	—	2.E-12 [5]	—	/BS/
Am-244m	—	2.E-06 [5]	—	/BS/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Am-244	—	7.E-08[5]	—	/BS/
Am-245	—	3.E-05[5]	—	/St/
Am-246m	—	7.E-05[5]	—	/St/
Am-246	—	4.E-05[5]	—	/St/
Cm-238	—	4.E-07[5]	—	/St/
Cm-240	—	2.E-10[5]	—	/BS/
Cm-241	—	9.E-09[5]	—	/BS/
Cm-242	—	1.E-10[5]	—	/BS/
Cm-243	—	3.E-12[5]	—	/BS/
Cm-244	—	4.E-12[5]	—	/BS/
Cm-245	—	2.E-12[5]	—	/BS/
Cm-246	—	2.E-12[5]	—	/BS/
Cm-247	—	2.E-12[5]	—	/BS/
Cm-248	—	6.E-13[5]	—	/BS/
Cm-249	—	6.E-06[5]	—	/BS/
Bk-245	—	5.E-07	—	/St/
Bk-246	—	1.E-06	—	/St/
Bk-247	—	2.E-12	—	/BS/
Bk-249	—	9.E-10	—	/BS/
Bk-250	—	2.E-07	—	/BS/
Cf-244	—	2.E-07[5]	2.E-07[5]	/St/St
Cf-246	—	4.E-09[5]	4.E-09[5]	/St/St
Cf-248	—	4.E-11[5]	5.E-11[5]	/BS/St
Cf-249	—	2.E-12[5]	6.E-12[5]	/BS/BS
Cf-250	—	5.E-12[5]	1.E-11[5]	/BS/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m³)	(Bq/m³)	(Bq/m³)	(D / W / Y)
Pu-240	—	8.E-02[5]	2.E-01[5]	/BS/BS
Pu-241	—	4.E+00[5]	1.E+01[5]	/BS/BS
Pu-242	—	9.E-02[5]	2.E-01[5]	/BS/BS
Pu-243	—	5.E+05[5]	6.E+05[5]	/St/St
Pu-244	—	9.E-02[5]	2.E-01[5]	/BS/BS
Pu-245	—	7.E+04[5]	6.E+04[5]	/St/St
Am-237	—	4.E+06[5]	—	/St/
Am-238	—	4.E+04[5]	—	/BS/
Am-239	—	2.E+05[5]	—	/St/
Am-240	—	4.E+04[5]	—	/St/
Am-241	—	8.E-02[5]	—	/BS/
Am-242m	—	8.E-02[5]	—	/BS/
Am-242	—	1.E+03[5]	—	/BS/
Am-243	—	8.E-02[5]	—	/BS/
Am-244m	—	6.E+04[5]	—	/BS/
Am-244	—	3.E+03[5]	—	/BS/
Am-245	—	1.E+06[5]	—	/St/
Am-246m	—	3.E+06[5]	—	/St/
Am-246	—	2.E+06[5]	—	/St/
Cm-238	—	2.E+04[5]	—	/St/
Cm-240	—	8.E+00[5]	—	/BS/
Cm-241	—	4.E+02[5]	—	/BS/
Cm-242	—	4.E+00[5]	—	/BS/
Cm-243	—	1.E-01[5]	—	/BS/
Cm-244	—	2.E-01[5]	—	/BS/
Cm-245	—	8.E-02[5]	—	/BS/
Cm-246	—	8.E-02[5]	—	/BS/
Cm-247	—	9.E-02[5]	—	/BS/
Cm-248	—	2.E-02[5]	—	/BS/
Cm-249	—	2.E+05[5]	—	/BS/
Bk-245	—	2.E+04	—	/St/
Bk-246	—	5.E+04	—	/St/
Bk-247	—	8.E-02	—	/BS/
Bk-249	—	3.E+01	—	/BS/
Bk-250	—	7.E+03	—	/BS/
Cf-244	—	9.E+03[5]	9.E+03[5]	/St/St
Cf-246	—	2.E+02[5]	1.E+02[5]	/St/St
Cf-248	—	1.E+00[5]	2.E+00[5]	/BS/St
Cf-249	—	8.E-02[5]	2.E-01[5]	/BS/E
Cf-250	—	2.E-01[5]	4.E-01[5]	/BS/St

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(μCi/mL)	(μCi/mL)	(μCi/mL)	(D / W / Y)
Cf-251	–	2.E-12 [5]	5.E-12 [5]	/BS/BS
Cf-252	–	1.E-11 [5]	2.E-11 [5]	/BS/St
Cf-253	–	8.E-10 [5]	7.E-10 [5]	/St/St
Cf-254	–	9.E-12 [5]	7.E-12 [5]	/St/St
Es-250	–	3.E-07	–	/BS/
Es-251	–	4.E-07	–	/BS/
Es-253	–	6.E-10	–	/St/
Es-254m	–	4.E-09	–	/St/
Es-254	–	4.E-11	–	/BS/
Fm-252	–	6.E-09	–	/St/
Fm-253	–	4.E-09	–	/St/
Fm-254	–	4.E-08	–	/St/
Fm-255	–	9.E-09	–	/St/
Fm-257	–	1.E-10	–	/E /
Md-257	–	4.E-08	–	/St/
Md-258	–	1.E-10	–	/BS/

Radionuclide	Inhaled air—lung retention class			Stochastic or organ [1]
	D	W	Y	
	(Bq/m^3)	(Bq/m^3)	(Bq/m^3)	(D / W / Y)
Cf-251	—	8.E-02 [5]	2.E-01 [5]	/BS/BS
Cf-252	—	4.E-01 [5]	6.E-01 [5]	/BS/St
Cf-253	—	3.E+01 [5]	3.E+01 [5]	/St/St
Cf-254	—	3.E-01 [5]	3.E-01 [5]	/St/St
Es-250	—	1.E+04	—	/ BS/
Es-251	—	2.E+04	—	/ BS/
Es-253	—	2.E+01	—	/ St/
Es-254m	—	2.E+02	—	/ St/
Es-254	—	2.E+00	—	/ BS/
Fm-252	—	2.E+02	—	/ St/
Fm-253	—	2.E+02	—	/ St/
Fm-254	—	2.E+03	—	/ St/
Fm-255	—	3.E+02	—	/ St/
Fm-257	—	4.E+00	—	/ St/
Md-257	—	2.E+03	—	/ St/
Md-258	—	4.E+00	—	/ BS/

Footnotes for Appendix A

[1] A determination of whether the DACs are controlled by stochastic (St) or nonstochastic (organ) dose, or if they both give the same result (E) for each lung retention class is given in this column. The key to the organ notation for nonstochastic dose is: BS=Bone surface, K=Kidney, L=Liver, SW=Stomach wall, and T=Thyroid. A blank indicates no calculations were performed for the lung retention class shown.

[2] The ICRP identifies tritiated water and carbon as having immediate uptake and distribution; therefore no solubility classes are designated. For purposes of this table, the DAC values are shown as being constant, independent of solubility class. For tritiated water, the inhalation DAC values allow for an additional 50% absorption through the skin, as described in ICRP Publication No. 30: Limits for Intakes of Radionuclides by Workers. For elemental tritium, the DAC values are based solely on consideration of the dose-equivalent rate to the tissues of the lung from inhaled tritium gas contained within the lung, without absorption in the tissues.

[3] A dash indicates no values given for this data category.

[4] These values are appropriate for protection from radon combined with its short-lived daughters and are based on information given in ICRP Publication 32: Limits for Inhalation of Radon Daughters by Workers and Federal Guidance Report No. 11: Limiting Values of Radionuclide Intake and Air Concentrations, and Dose Conversion Factors for Inhalation, Submersion, and Ingestion (EPA 520/1–88–020). The values given are for 100% equilibrium concentration conditions of the radon daughters with the parent. To allow for an actual measured equilibrium concentration or a demonstrated equilibrium concentration, the values given in this table should be multiplied by the ratio (100%/actual %) or (100%/demonstrated %), respectively. Alternatively, the DAC values for Rn-220 and Rn-222 may be replaced by 1 WL* and ⅓ WL*, respectively, for appropriate limiting of daughter concentrations. Because of the dosimetric considerations for radon, no f_1 or lung clearance values are listed.

* A "Working Level" (WL) is any combination of short-lived radon daughters, in one liter of air without regard to the degree of equilibrium, that will result in the ultimate emission of 1.3 E+05 MeV of alpha energy.

[5] For the calculations, f_1 values were obtained from ICRP Publication 48: The Metabolism of Plutonium and Related Elements. It is assumed that the effective dose equivalents for inhalation are unchanged even though the f_1 values have changed. This is because the contribution to organ dose from inhalation is dependent mainly on transfer from lung to blood when f_1 values are small. Also, the gastrointestinal tract dose would be unchanged because the fraction of activity passing through the tract is $(1.0–f_1)$.

Appendix B*

ALTERNATIVE ABSORPTION FACTORS AND LUNG RETENTION CLASSES FOR SPECIFIC COMPOUNDS

Element/symbol	Atomic No.	Compound	f_1	Lung retention class
Actinium/Ac	89	Oxides, hydroxides	1.E−03	Y.
		Halides, nitrates	1.E−03	W.
		All others	1.E−03	D.
Aluminum/Al	13	Oxides, hydroxides, carbides, halides, nitrates, elemental form	1.E−02	W.
		All others	1.E−02	D.
Americium/Am	95	All forms	1.E−03	W.
Antimony/Sb	51	Oxides, hydroxides, halides, sulphides, sulphates, nitrates	1.E−01	D.
		All others	1.E−02	W.
Arsenic/As	33	All forms	5.E−01	W.
Astatine/At	85	All (as a halide)	1.E+00	W or D; dependent upon associated element.
Barium/Ba	56	All forms	1.E−01	D.
Berkelium/Bk	97	All forms	5.E−04	W.
Beryllium/Be	4	Oxides, halides, nitrates	5.E−03	Y.
		All others	5.E−03	W.
Bismuth/Bi	83	All except nitrates	5.E−02	W.
		Nitrates	5.E−02	D.
Bromine/Br	35	Bromides	1.E+00	W or D; dependent upon associated element.
Cadmium/Cd	48	Oxides, hydroxides	5.E−02	Y.
		Sulphates, halides	5.E−02	W.
		All others	5.E−02	D.
Calcium/Ca	20	All forms	3.E−01	W.
Californium/Cf	98	Oxides, hydroxides	1.E−03	Y.
		All others	1.E−03	W.
Carbon/C	6	Oxides [1]	—	D.
		Organic (C−11)	1.E+00	W.
		Organic (C−14)	1.E+00	W.
Cerium/Ce	58	Oxides, hydroxides, fluorides	3.E−04	Y.
		All others	3.E−04	W.
Cesium/Cs	55	All forms	1.E+00	D.
Chlorine/Cl	17	Chloride	1.E+00	W or D; dependent upon associated element.
Chromium/Cr	24	Oxides, hydroxides	1.E−01	Y.
		Halides, nitrates	1.E−01	W.
		All others	1.E−01	D.
		Ingestion [2]		
		Trivalent	1.E−02	
		Hexavalent	1.E−01	
Cobalt/Co	27	Oxides, hydroxides, halides, nitrates	5.E−02	Y.
		All others	5.E−02	W.
		Ingestion only [2]	3.E−01	
Copper/Cu	29	Oxides, hydroxides	5.E−01	Y.
		Sulphites, halides, nitrates	5.E−01	W.
		All others	5.E−01	D.
Curium/Cm	96	All forms	1.E−03	W.
Dysprosium/Dy	66	All forms	3.E−04	W.
Einsteinium/Es	99	All forms	5.E−04	W.
Erbium/Er	68	All forms	3.E−04	W.
Europium/Eu	63	All forms	1.E−03	W.
Fermium/Fm	100	All forms	5.E−04	W.
Fluorine/F	9	Fluoride	1.E+00	Y, W, or D; dependent upon associated element.
Francium/Fr	87	All forms	1.E+00	D.
Gadolinium/Gd	64	Oxides, hydroxides, fluorides	3.E−04	W.
		All others	3.E−04	
Gallium/Ga	31	Oxides, hydroxides, carbides, halides, nitrates	1.E−03	W.
		All others	1.E−03	D.
Germanium/Ge	32	Oxides, sulphides, halides	1.E+00	W.
		All others	1.E+00	D.
Gold/Au	79	Oxides, hydroxides	1.E−01	Y.
		Halides, nitrates	1.E−01	W.
		All others	1.E−01	D.
Hafnium/Hf	72	Oxides, hydroxides, halides, carbides, nitrates	2.E−03	W.
		All others	2.E−03	D.
Holmium/Ho	67	All forms	3.E−04	W.
Hydrogen/H	1	Water, elemental	1.E+00	
Indium/In	49	Oxides, hydroxides, halides	2.E−02	W.
		All others	2.E−02	D.
Iodine/I	53	All forms	1.E+00	D.
Iridium/Ir	77	Oxides, hydroxides	1.E−02	Y.
		Halides, nitrates, metallic form	1.E−02	W.
		All others	1.E−02	D.
Iron/Fe	26	Oxides, hydroxides, halides	1.E−01	W
		All others	1.E−01	D.
Lanthanum/La	57	Oxides, hydroxides	1.E−03	W.
		All others	1.E−03	D.
Lead/Pb	82	All forms	2.E−01	D.
Lutetium/Lu	71	Oxides, hydroxides, fluorides	3.E−04	Y

*See Appendix E for additional information.

ALTERNATIVE ABSORPTION FACTORS AND LUNG RETENTION CLASSES FOR SPECIFIC COMPOUNDS—Continued

Element/symbol	Atomic No.	Compound	f_1	Lung retention class
		All others	3.E−04	W.
Magnesium/Mg	12	Oxides, hydroxides, carbides, halides, nitrates	5.E−01	W.
		All others	5.E−01	D.
Manganese/Mn	25	Oxides, hydroxides, halides, nitrates	1.E−01	W.
		All others	1.E−01	D.
Mendelevium/Md	101	All forms	5.E−04	W.
Mercury/Hg	80	Oxides, hydroxides, halides, nitrates, sulphites	2.E−02	W.
		Sulphates, elemental form	2.E−02	D.
		Organic forms	1.E+00	D.
		Vapor [1]	—	D.
Molybdenum/Mo	42	Oxides, hydroxides, MoS_2	5.E−02	Y.
		All others	8.E−01	D.
		Ingestion [2]		
		MoS_2	5.E−02	
		All others	8.E−01	
Neodymium/Nd	60	Oxides, hydroxides, carbides, fluorides	3.E−04	W.
		All others	3.E−04	Y.
Neptunium/Np	93	All forms	1.E−03	W.
Nickel/Ni	28	Oxides, hydroxides	5.E−02	W.
		All others (vapor) [1]		D.
Niobium/Nb	41	Oxides, hydroxides	1.E−02	Y.
		All others	1.E−02	W.
Osmium/Os	76	Oxides, hydroxides	1.E−02	Y.
		Halides, nitrates	1.E−02	W.
		All others	1.E−02	D.
Palladium/Pd	46	Oxides, hydroxides	5.E−03	Y.
		Nitrates	5.E−03	W.
		All others	5.E−03	D.
Phosphorus/P	15	Phosphates	8.E−01	W or D; dependent upon associated element.
Platinum/Pt	78	All forms	1.E−02	D.
Plutonium/Pu	94	Oxides, hydroxides	1.E−05	Y.
		Nitrates	1.E−04	W.
		All other	1.E−03	W.
		[Note: Use same values for ingestion]		
Polonium/Po	84	Oxides, hydroxides, nitrates	1.E−01	W.
		All others	1.E−01	D.
Potassium/K	19	All forms	1.E+00	D.
Praseodymium/Pr	59	Oxides, hydroxides, carbides, fluorides	3.E−04	Y.
		All others	3.E−04	W.
Promethium/Pm	61	Oxides, hydroxides, carbides, fluorides	3.E−04	Y.
		All others	3.E−04	W.
Protactinium/Pa	91	Oxides, hydroxides	1.E−03	Y.
		All others	1.E−03	W.
Radium/Ra	88	All forms	2.E−01	W.
Rhenium/Re	75	Oxides, hydroxides, halides, nitrates	8.E−01	W.
		All others	8.E−01	D.
Rhodium/Rh	45	Oxides, hydroxides	5.E−02	Y.
		Halides	5.E−02	W.
		All others	5.E−02	D.
Rubidium/Rb	37	All forms	1.E+00	D.
Ruthenium/Ru	44	Oxides, hydroxides	5.E−02	Y.
		Halides	5.E−02	W.
		All others	5.E−02	D.
Samarium/Sm	62	All forms	3.E−04	W.
Scandium/Sc	21	All forms	1.E−04	Y.
Selenium/Se	34	Oxides, hydroxides, carbides	8.E−01	W.
		All others	8.E−01	D.
		Ingestion only [2]	5.E−02	
Silicon/Si	14	Ceramic forms	1.E−02	Y.
		Oxides, hydroxides, carbides, nitrates	1.E−02	W.
		All others	1.E−02	D.
Silver/Ag	47	Oxides, hydroxides	5.E−02	Y.
		Nitrates, sulphides	5.E−02	W.
		All others, elemental form	5.E−02	D.
Sodium/Na	11	All forms	1.E+00	D.
Strontium/Sr	38	$SrTiO_3$	1.E−02	Y.
		All others (soluble)	3.E−01	D.
Sulfur/S	16	All Inorganic	8.E−01	D.
		Elemental Form	8.E−01	W.
		Gases	1.E+00	D.
		Ingestion [2]		
		All inorganic	1.E−01	
Tantalum/Ta	73	Oxides, hydroxides, halides, carbides, nitrates, nitrides	1.E−03	Y.
		All others	1.E−03	W.
Technetium/Tc	43	Oxides, hydroxides, halides, nitrates	8.E−01	W.
		All others	8.E−01	D.
Tellurium/Te	52	Oxides, hydroxides, nitrates	2.E−01	W.
		All others	2.E−01	D.

ALTERNATIVE ABSORPTION FACTORS AND LUNG RETENTION CLASSES FOR SPECIFIC COMPOUNDS—Continued

Element/symbol	Atomic No.	Compound	f_1	Lung retention class
Terbium/Tb	65	All forms	3.E−04	W.
Thallium/Tl	81	All forms	1.E+00	D.
Thorium/Th	90	Oxides, hydroxides	2.E−04	Y.
		All others	2.E−04	W.
Thulium/Tm	69	All forms	3.E−04	W.
Tin/Sn	50	Oxides, hydroxides, halides, nitrates, sulphides, $Sn_3(PO_4)_4$	2.E−02	W.
		All others	2.E−02	D.
Titanium/Ti	22	$SrTiO_3$	1.E−02	Y.
		Oxides, hydroxides, carbides, halides, nitrates	1.E−02	W.
		All others	1.E−02	D.
Tungsten/W	74	*Ingestion* [2]		
		Tungstic acid	1.E−02	—
		All others	3.E−01	—
Uranium/U	92	UO_2, U_3O_8	2.E−03	Y.
		UO_3, tetravalent compounds	5.E−02	W.
		UF_6, uranyl compounds	5.E−02	D.
Vanadium/V	23	Oxides, hydroxides, carbides, halides	1.E−02	W.
		All others	1.E−02	D.
Ytterbium/Yb	70	Oxides, hydroxides, fluorides	3.E−04	Y.
		All others	3.E−04	W.
Yttrium/Y	39	Oxides, hydroxides	1.E−04	Y.
		All others	1.E−04	W.
Zinc/Zn	30	All forms	5.E−01	Y.
Zirconium/	40	Carbides	2.E−03	Y.
		Oxides, hydroxides, halides, nitrates	2.E−03	W.
		All others	2.E−03	D.

[1] A dash indicates no data for the value shown.
[2] For ingestion, no lung retention classes are listed.

Appendix C*

DERIVED AIR CONCENTRATION (DAC) FOR WORKERS FROM EXTERNAL EXPOSURE DURING IMMERSION IN A CONTAMINATED ATMOSPHERIC CLOUD

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
C-11	20.48 min	4.E−06	1.E+05
N-13	9.97 min	4.E−06	1.E+05
N-16	7.13 s	7.E−07	3.E+04
O-15	122.24 s	4.E−06	1.E+05
F-18 [1]	109.74 min.	4.E−06	1.E+05
Na-24 [1]	15.00 h	9.E−07	3.E+04
Mg-27 [2]	9.458 min	5.E−06	2.E+05
Al-28 [2]	2.240 min	2.E−06	7.E+04
Cl-38 [1]	37.21 min	3.E−06	1.E+05
Ar-37	35.02 d	3.E−00	1.E+11
Ar-39	269 yr	[3] 2.E−04	[3] 7.E+06
Ar-41	1.827 h	3.E−06	1.E+05
K-43 [1]	22.6 h	5.E−06	2.E+05
Ca-492	8.719 min	1.E−06	4.E+04
Sc-44 [1]	3.927 h	2.E−06	7.E+04
Sc-46M [2]	18.72 s	5.E−05	2.E+06
Ti-45 [1]	3.08 h	5.E−06	2.E+05
Ti-52 [2]	5.752 min	1.E−05	4.E+05
V-52 [2]	3.75 min	3.E−06	1.E+05
Cr-49 [1]	42.09 min	5.E−06	2.E+05
Mn-52m [1]	21.4 m	2.E−06	7.E+04
Mn-56 [1]	2.5785 h	2.E−06	7.E+04
Mn-57 [2]	1.47 min	6.E−05	2.E+06

*See Appendix E for additional information.

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Co-60m [1]	10.47 min	1.E−03	4.E+07
Ni-57 [1] [4]	36.08 h	2.E−06	7.E+04
Ni-65 [1] [5]	2.520 h	8.E−06	3.E+05

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Cu-61 [1]	3.408 h	5.E−06	2.E+05
Cu-62 [2]	9.74 min	5.E−06	2.E+05
Ga-66 [1]	9.40 h	2.E−06	7.E+04
Ga-68 [1]	68.0 min	5.E−06	2.E+05
Ga-72 [1]	14.1 h	1.E−06	4.E+04
Se-73 [1]	7.15 h	4.E−06	1.E+05
Br-77 [1]	57.04 h	[6] 1.E−05	[6] 4.E+05
Br-80 [1]	17.4 min	5.E−05	2.E+06
Br-82 [1]	35.30 h	1.E−06	4.E+04
Br-84 [1]	31.80 min	2.E−06	7.E+04
Br-85 [2]	172 s	5.E−05	2.E+06
Kr-79	35.04 h	2.E−05	7.E+05
Kr-81	2.1E+05 yr.	5.E−04	2.E+07
Kr-83m	1.83 h	5.E−02	2.E+09
Kr-85	10.72 yr	[3] 1.E−04	[3] 4.E+06
Kr-85m	4.48 h	3.E−05	1.E+06
Kr-87	76.3 min	5.E−06	2.E+05
Kr-88	2.84 h	2.E−06	7.E+04
Kr-89	3.16 min	2.E−06	7.E+04
Kr-90	32.32 s	3.E−06	1.E+05
Rb-81 [1]	4.58 h	8.E−06	3.E+05
Rb-82 [2]	1.25 min	2.E−06	7.E+04
Rb-88 [1]	17.8 min	7.E−06	3.E+05
Rb-89 [1]	15.44 min	2.E−06	7.E+04
Rb-90 [2]	157 s	2.E−06	7.E+04
Rb-90m [2]	258 s	1.E−06	4.E+04
Sr-85m [1]	67.66 min	2.E−05	7.E+04
Sr-87m [1]	2.805 h	6.E−05	2.E+06
Sr-92 [1]	2.71 h	3.E−06	1.E+05
Sr-93 [2]	7.3 min	2.E−06	7.E+04
Y-86 [1]	14.74 h	1.E−06	4.E+04
Y-90m [1]	3.19 h	[6] 5.E−06	[6] 2.E+05
Y-91m [1]	49.71 min	9.E−06	3.E+05

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Nb-90 [1]	14.60 h	1.E−07	4.E+03
Nb-94M [2]	6.26 min	9.E−04	3.E+07
Nb-97 [1]	72.1 min	7.E−06	3.E+05

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Nb-97M [1]	60 s	6.E−06	2.E+05
Mo-91 [2]	15–49 min.	4.E−06	1.E+05
Mo-101 [1]	14–61 min.	3.E−06	1.E+05
Tc-95 [1]	20.0 h	5.E−06	2.E+05
Tc-96m [1]	51.5 min	1.E−04	4.E+06
Tc-99m [1]	6.02 h	3.E−05	1.E+06
Tc-101 [1]	14.2 min	1.E−05	4.E+05
Ru-105 [1]	4.44 h	5.E−06	2.E+05
Rh-105m [2]	45 s	1.E−04	4.E+06
Rh-106 [2]	29–92 s	2.E−05	7.E+05
Ag-108 [2]	2.37 min	2.E−04	7.E+06
Ag-109m [2]	39.6 s	1.E−03	4.E+07
Ag-110 [2]	24.57 s	9.E−05	3.E+06
Cd-111m [2]	48.7 min	1.E−05	4.E+05
Cd-117 [1]	2.49 h	4.E−06	1.E+05
Cd-117m [1]	3.36 h	2.E−06	7.E+04
In-113m [1]	1.658 h	2.E−05	7.E+05
In-114 [2]	71.9 s	1.E−04	4.E+06
In-116m [1]	54.15 min	2.E−06	7.E+04
In-117 [1]	43.8 min	7.E−06	3.E+05
Sb-117 [1]	2.80 h	3.E−05	1.E+06
Sb-126m [1]	19.0 min	3.E−06	1.E+05
Sb-129 [1]	4.40 h	3.E−06	1.E+05
Te-133 [1]	12.45 min	5.E−06	2.E+05
Te-133m [1]	55.4 min	2.E−06	7.E+04
Te-134 [1]	41.8 min	5.E−06	2.E+05
I-122 [2]	3.62 min	5.E−06	2.E+05
I-128 [1]	24.99 min	5.E−05	2.E+06
I-132 [1]	2.30 h	2.E−06	7.E+04
I-134 [1]	52.6 min	1.E−06	4.E+04
I-135 [1]	6.61 h	[6] 7.E−07	[6] 3.E+04
I-136 [2]	83 s	1.E−06	4.E+04

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Xe-122	20.1 h	8.E−05	3.E+06
Xe-123	2.14 h	7.E−06	3.E+05

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Xe-125	16.8 h	2.E−05	7.E+05
Xe-127	36.406 d	1.E−05	4.E+05
Xe-129m	8.89 d	2.E−04	7.E+06
Xe-131m	11−.84 d	5.E−04	2.E+07
Xe-133	5.245 d	1.E−04	4.E+06
Xe-133m	2.19 d	1.E−04	4.E+06
Xe-135	9.11 h	2.E−05	7.E+05
Xe-135m	15.36 min	1.E−05	4.E+05
Xe-137	3.83 min	2.E−05	7.E+05
Xe-138	14.13 min	4.E−06	1.E+05
Cs-126 [2]	1.64 min	4.E−06	1.E+05
Cs-129 [1]	32.06 h	[6] 1.E−05	[6] 4.E+05
Cs-138 [1]	32.2 min	2.E−06	7.E+04
Cs-139 [2]	9.40 min	1.E−05	4.E+05
Ba-137m [3]	2.552 min	7.E−06	3.E+05
Ba-141 [1]	18.27 min	5.E−06	2.E+05
Ba-142 [1]	10.70 min	5.E−06	2.E+05
La-142 [1]	95.4 min	1.E−06	4.E+04
Pr-144m [3]	7.2 min	9.E−04	3.E+07
Nd-149 [1]	1.73 h	1.E−05	4.E+05
Gd-162 [2]	9.7 min	1.E−05	4.E+05
Td-162 [2]	7.76 min	4.E−06	1.E+05
Dy-157 [1]	8.06 h	1.E−05	4.E+05
Re-182m [1]	12.7 h	4.E−06	1.E+05
Os-190m [2]	9.9 min	3.E−06	1.E+05
Ir-190m [1]	3.2 h	[6] 8.E−05	[6] 3.E+06
Au-195m [2]	30.6 s	2.E−05	7.E+05

Radionuclide	Half-life	Air immersion DAC	
		(μCi/mL)	(Bq/m³)
Tl-200 [1]	26.1 h	3.E−06	1.E+05
Tl-207 [2]	4.77 min	[3] 4.E−05	[3] 1.E+06
Tl-208 [3]	3.b53 min	1.E−06	4.E+04
Tl-209 [2]	2.20 min	2.E−06	7.E+04
Tl-210 [2]	1.30 min	1.E−06	4.E+04
Pb-204m [2]	66.9 min	2.E−06	7.E+04
Bi-211 [2]	2.13 min	1.E−04	4.E+06
Po-211 [2]	0.516 s	5.E−04	2.E+07
Rn-220	55.61 s	[6] 8.E−09	[6] 3.E+02
Rn-222	3.824 d	[6] 3.E−08	[6] 1.E+03
Th-233 [2]	22.3 min	1.E−04	4.E+06
Pa-234 [1]	6.70 h	2.E−06	7.E+04
Pa-234m [2]	1.17 min	[3] 4.E−05	[3] 1.E+06
U-239 [1]	23.40 min	[6] 8.E−05	[6] 3.E+06
Np-240 [1]	65 min	4.E−06	1.E+05
Np-240m [2]	7.4 min	1.E−05	4.E+05
Am-246 [1]	25.0 min	4.E−06	1.E+05

[1] Committed effective dose equivalent from inhalation is calculated in ICRP Publication 30, but the DAC value for external exposure to a contaminated atmospheric cloud is more restrictive than the DAC value for inhalation.

[2] Committed effective dose equivalent from inhalation is not calculated in ICRP Publication 30, but DAC value for external exposure to contaminated cloud should be more restrictive than DAC value for inhalation due to relatively short half-life of radionuclide.

[3] DAC value is determined by limit on annual dose equivalent to skin, rather than limit on annual effective dose equivalent.

[4] DAC value applies to radionuclide in vapor form only; DAC value for inhalation is more restrictive for radionuclide in inorganic form.

[5] DAC value applies to radionuclide inorganic or vapor form.

[6] DAC value for exposure to contaminated atmospheric cloud is the same as DAC value for inhalation.

Appendix D

SURFACE RADIOACTIVITY VALUES[1]

Nuclide	Removable[2] [4] (dpm/100 cm²)	Fixed + Removable[2] [3] (dpm/100 cm²)
U-nat, U-235, U-238, and associated decay products.	1,000	5,000
Transuranics, Ra-226, Ra-228, 14Th-230, Th-228 Pa-231, AC-227 I-125, I-129.	20	300
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133.	200	1,000
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except Sr-90 and others noted above.[5].	1,000	5,000
Tritium Organic compounds; surfaces contaminated by HT and metal tritide aerosols.	(Reserved)	(Reserved)

[1] The values in this appendix apply to radioactive contamination deposited on, but not incorporated into the interior of the contaminated item. Where surface contamination by both alpha- and beta-gamma-emitting nuclides exists, the limits established for alpha- and beta-gamma-emitting nuclides apply independently.

[2] As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minutes observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.

[3] The levels may be averaged over one square meter provided the maximum surface activity in any area of 100 cm² is less than three times the value specified. For purposes of averaging, any square meter of surface shall be considered to be above the activity value *G* if: (1) from measurements of a representative number n of sections it is determined that $1/n\Sigma_n S_i > G$, where S_i is the dis/min 100cm² determined from measurement of section i; or (2) it is determined that the sum of the activity of all isolated spots or particles in any 100 cm² area exceeds 3G.

[4] The amount of removable radioactive material per 100 cm² of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. (Note—The use of dry material may not be appropriate for tritium.) When removable contamination on objects of surface are a less than 100 cm² is determined, the activity per unit area should be based on the actual area and the entire surface should be wiped. Except for tansuranics and Ra-228, Ac-227, Th-228, Th-230, and Pa-231 alpha emitters, it is not necessary to use wiping techniques to measure removable contamination levels if direct scan surveys indicate that the total residual surface contamination levels are within the limits for removable contamination.

[5] This category of radionuclides includes mixed fission products, including the Sr-90 which is present in them. It does not apply to Sr-90 which has been separated from the other fission products or mixtures where the SR-90 has been enriched.

APPENDIX E

Derived Air Concentrations for Controlling Radiation Exposure to Workers at DOE Facilities

The derived air concentrations (DAC) for limiting radiation exposures through inhalation of radionuclides by workers are listed in Appendix A. The DAC values are given in units of μCi/mL and in units of Bq/m³ in the facing pages. The values are based on either a stochastic (committed effective dose equivalent) dose limit of 5 rem (0.05 Sv) or a nonstochastic (organ) dose limit of 50 rem (0.5 Sv) per year, whichever is more limited. (Note: the 15 rem [0.15 Sv] dose limit for the lens of the eye does not appear as a critical organ dose limit.)

Appendix A contains five columns of information: (1) Radionuclide; (2) inhaled air DAC for lung retention class D; (3) inhaled air DAC for lung retention class W; (4) inhaled air DAC for lung retention class Y; and (5) an indication of whether or not the DAC for each class is controlled by the stochastic (effective dose equivalent) or nonstochastic (tissue) dose. The classes D, W, and Y have been established to describe the clearance of inhaled radionuclides from the lung. This classification refers to the approximate length of retention in the pulmonary region. Thus, the range of half-times is less than 10 days for class D (days), from 10 to 100 days for class W (weeks), and greater than 100 days for class Y (years). The DACs in Appendix A are listed by radionuclide, in order of increasing atomic mass, and are based on the assumption that the particle size distribution of the inhaled material is unknown and an assumed particle size distribution of 1 μm is used. For situations where the particle size distribution is known to differ significantly from 1 μm, appropriate corrections can be made to both the estimated dose to workers and the DACs.

Alternative absorption factors and lung retention classes for specific compounds are listed by element in Appendix B for cross-referencing with the inhalation DACs in Appendix A. The data shown in Appendix B are listed by element in alphabetical order.

The air immersion DAC values shown in Appendix C are based on a stochastic limit of 5 rem (0.5 Sv) per year or a nonstochastic (organ) dose limit of 50 rem (0.5 Sv) per year. Appendix C contains four columns of information: (1) radionuclide; (2) half-life in units of seconds (s), minutes (min), hours (h), days (d), or years (y); (3) air immersion

DAC in units of μCi/mL; and (4) Air immersion DAC in units of Bq/m ^{3}. The data are listed by radionuclide in order of increasing atomic mass. The air immersion DACs were calculated for a continuous, nonshielded exposure via immersion in a semi-infinite atmospheric cloud.

The DAC value for air immersion listed in Appendix C for a given radionuclide is determined either by a limit on annual effective dose equivalent, which provides a limit on stochastic radiation effects, or by a limit on annual dose equivalent to any organ, which provides a limit on nonstochastic radiation effects. For most of the radionuclides listed in Appendix C, the DAC value is determined by the limit on annual effective dose equivalent. Thus, the few cases where the DAC value is determined by the limit on annual dose equivalent to skin are indicated in the table by an appropriate footnote. Again, the DACs listed in Appendix C account only for immersion in a semi-infinite cloud and do not account for inhalation or ingestion exposures.

Three classes of radionuclides are included in the air immersion DACs as described below.

(1) *Class 1.* The first class of radionuclides includes selected noble gases short-lived activation products that occur in gaseous form. For these radionuclides, inhalation doses are negligible compared to the external dose from immersion in an atmospheric cloud.

(2) *Class 2.* The second class of radionuclides includes those for which a DAC value for inhalation has been calculated but for which the DAC value for external exposure to a contaminated atmospheric cloud is more restrictive (i.e., results in a lower DAC value). These radionuclides generally have half-lives of a few hours or less, or are eliminated from the body following inhalation sufficiently rapidly to limit the inhalation dose.

(3) *Class 3.* The third class of radionuclides includes selected isotopes with relatively short half-lives. These radionuclides typically have half-lives that are less than 10 minutes, they do not occur as a decay product of a longerlived radionuclide, or they lack sufficient decay data to permit internal dose calculations. These radionuclides are also typified by a radicactive emission of highly intense, high-energy photons and rapid removal from the body following inhalation.

The DAC values are given for individual radionuclides. For known mixtures of radionuclides, the sum of the ratio of the observed concentration of a particular radionuclide and its corresponding DAC for all radionuclides in the mixture must not exceed 1.0. For unknown radionuclides, the most restrictive DAC (lowest value) for those isotopes not known to be absent shall be used.

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Monday
December 9, 1991

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Perchloroethylene Dry Cleaners; Proposed Rule; Withdrawal

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Emissions From Dry Cleaning Facilities; Proposed Rule and Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 4032-5]

Standards of Performance for New Stationary Sources; Perchloroethylene Dry Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Withdrawal.

SUMMARY: The proposed new source performance standards (NSPS) for limiting emissions of volatile organic compounds (VOC) from new, modified, and reconstructed perchloroethylene (perc) dry cleaners published in the Federal Register on November 25, 1980 (45 FR 78174) is being withdrawn. The proposed standards implemented section 111 of the Clean Air Act and were based on the Administrator's determination that perc dry cleaners contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The intent of this notice is to notify owners and operators of dry cleaning facilities that EPA is proposing to regulate the proposed NSPS under section 111 of the Clean Air Act is being withdrawn and that dry cleaning facilities instead under section 112 of the Clean Air Act Amendments of 1990. The notice of proposed rulemaking under section 112 is published elsewhere in today's Federal Register.

EFFECTIVE DATE: December 9, 1991.

ADDRESSES: *Docket.* Docket No. A-79-30, containing supporting information used by EPA in developing the proposed standards, and a copy of this notice are available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541-1549 or Mr. Fred Porter at (919) 541-5251, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On December 26, 1985 (50 FR 52680), EPA published a Notice of Intent to List PCE as a potentially toxic air pollutant to be regulated under section 112 of the CAA and solicited information on the potential carcinogenicity of PCE. Perchloroethylene is the predominant solvent used in dry cleaning.

Subsequent to EPA's Notice of Intent to List, the Clean Air Act Amendments of 1990 were enacted. The CAA includes a list of 190 hazardous air pollutants (section 112(b)) which includes PCE. This pollutant is emitted from dry cleaning facilities. Therefore, EPA is proposing to regulate PCE emissions from dry cleaning facilities under authority of section 112 of the Clean Air Act Amendments of 1990 as published elsewhere in today's **Federal Register.**

Dated: November 15, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-28066 Filed 12-6-91; 8:45 am]

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40 CFR Part 63

[AD-FRL-4032-6]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Emissions From Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standard would limit emissions of perchloroethylene (PCE) from existing and new dry cleaning facilities. The proposed national emission standards for hazardous air pollutants (NESHAP) implement section 112(d) of the Clean Air Act (CAA) Amendments of 1990, which require the Administrator to regulate emissions of hazardous air pollutants (HAP's) listed in section 112(b) of the Act, one of which is PCE. This pollutant is emitted from dry cleaning facilities. The intent of the proposed standards is to protect the public health by requiring new and existing major sources to control emissions to the level achievable by the maximum achievable control technology (MACT) and by requiring smaller area sources to control emissions using generally available control technologies (GACT), taking into consideration the cost of achieving such emission reduction and any non-air quality and other air quality related health and environmental impacts, and energy requirements.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standard for dry cleaning facilities.

A document announcing the withdrawal of the proposed new source performance standard (NSPS) for regulating volatile organic compound (VOC) emissions from PCE dry cleaners is published elsewhere in today's **Federal Register.**

DATES: *Comments.* Comments must be received on or before February 7, 1992.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 2, 1992, a public hearing will be held on January 8, 1992, beginning at 9 a.m. Persons interested in attending the hearing should call Ms. Stevens to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 2, 1992. Contact Mrs. Stevens at (919) 541-5578.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE-131), ATTN: Docket No. A-88-11, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the EPA Environmental Research Center Annex Auditorium located at Alexander Drive at Highway 54 in the Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Ms. Julia Stevens, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Documents. The background information document (BID) and the economic impact analysis for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Dry Cleaning Facilities—Background Information for Proposed Standards," EPA-450/3-91-020a and "Economic Impact of Regulatory Controls in the Dry Cleaning Industry," EPA-450/3-91-021.

Docket. Docket No. A-88-11, containing supporting information used in developing the proposed standard, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room 1500, 1st floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. George Smith at (919) 541–1549 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the health effects of PCE, contact Ms. Karen Blanchard at (919) 541–5503, Pollutant Assessment Branch, Emission Standards Division (MD–13) at the above address. For information regarding the technical aspects, contact Mr. Robert Rosensteel at (919) 541–5608, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), also at the above address.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. List of Categories and Subcategories
II. Background
III. National Emission Standards for Hazardous Air Pollutants Decision Process
  A. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development
  B. Criteria for Development of National Emission Standards for Hazardous Air Pollutants
  C. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors"
IV. Summary of Proposed Standards
V. Summary of Environmental, Energy, and Economic Impacts
  A. Facilities Affected by These National Emission Standards for Hazardous Air Pollutants
  B. Air
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  D. Energy Impacts
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VI. Rationale
  A. Selection of Pollutants and Source Category for Control
  B. Selection of Emission Points to be Covered by the Standards
  C. Selection of Basis of Proposed Standard for New and Existing Sources—Selection of Maximum Achievable Control Technology or Generally Available Control Technologies
  D. Selection of Format for the Proposed Standards
  E. Selection of Equipment and Pollution Prevention Standards
  F. Equivalent Systems of Emission Reduction
  G. Modification and Reconstruction Considerations
  H. Selection of Monitoring Requirements and Emission Test Methods
  I. Selection of Recordkeeping and Reporting Requirements
  J. Operating Permit Program
  K. Solicitation of Comments
VII. Administrative Requirements
  A. Public Hearing
  B. Docket
  C. Executive Order 12291
  D. Paperwork Reduction Act
  E. Regulatory Flexibility Act
  F. Miscellaneous

I. List of Categories and Subcategories

The Clean Air Act (CAA) Amendments of 1990 require, under section 112, that EPA evaluate and control emissions of HAP's. The control of hazardous air pollutants (HAP's) is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP's. The EPA recently published a notice outlining the procedures used to identify a list of categories of major sources and area sources of HAP's, and a preliminary list of such categories (required to be promulgated under section 112(c)(1)) was published in the Federal Register on June 21, 1991 (56 FR 28548). A promulgated list for major source categories will be published in the near future. Section 112(c)(3) directs the Administrator to list each category or subcategory of area sources which the Administrator finds "presents a threat of adverse effects to human health or the environment." Section 112(c)(3) also directs the Administrator to list within 5 years "sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP's that present the greatest threat to public health in the largest number of urban areas are subject to regulation."

Four dry cleaning source categories (for chlorinated solvents) were included on that preliminary list: (1) Dry cleaning—coin operation (plant); (2) dry cleaning—coin operation (self-service); (3) dry cleaning—commercial; and (4) dry cleaning—industrial. As described below, when EPA analyzed each of these categories, the distinguishing characteristic of each category was the type of machine used. It became apparent that each category should be subcategorized by machine type. Therefore, the following dry cleaning source categories and subcategories were analyzed in the context of this rulemaking:

Source category	Subcategory
Industrial (major)	Dry-to-dry machines.
	Transfer machines.
Commercial (major)	Transfer machines.
	Dry-to-dry machines.
	Transfer machines.
Commercial (area)	
Coin-operation (plant)	Dry-to-dry machines.
Coin-operation (self-service).	Dry-to-dry machines.

All sources in the industrial category are major sources. All sources in the plant coin-operation and self-service coin-operation categories are area sources. The commercial sector has two basic types of machines: dry-to-dry and transfer. Except for the 45.4 kilograms (kg) (100-pound [lb]) dry-to-dry machine, potential emissions from dry-to-dry machines, considering controls, do not exceed 9.1 megagram per year (Mg/yr) (10 tons per year [tpy]) of PCE. A major source includes any source that emits or has the potential to emit, considering controls, in the aggregate, 9.1 Mg/yr (10 tpy) of any HAP (CAA Section 112(a)(1)). In other regulatory contexts, "potential to emit" has been defined as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity to emit includes any air pollution control equipment and restrictions on operations or on the amount of material processed if such limitation is Federally enforceable (see 40 CFR 52.21(4)). There are three basic sizes of transfer machines in the commercial sector: 15.9 kg, 22.7 kg, and 45.4 kg (35 lb, 50 lb, and 100 lb). Their potential to emit, as well as the 45.4-kg (100-lb) dry-to-dry machine, can exceed 9.1 Mg/yr (10 tpy). Very few facilities would operate in a manner whereby their emissions would be in excess of 9.1 Mg/yr (10 tpy). However, a Federally enforceable permit limitation may limit a source's potential to emit. Therefore, for purposes of this proposed rulemaking, EPA is proposing that the industrial source category and major sources under the commercial source category be regulated under maximum achievable control technology (MACT). The EPA is also proposing that the commercial source category, which includes area sources, be listed under section 112(c)(3) for regulation under generally available control technology (GACT). (See section V.A for a detailed discussion of the rationale for listing this area source category.)

After evaluation, EPA is proposing not to list the plant coin-operation area source category under section 112(c)(3) for regulation. There are approximately 1,400 uncontrolled facilities in this category, emitting a total of about 800 Mg/yr (880 tpy) of HAP. There is a negative growth rate (existing facilities are not being replaced). Therefore, this

area source category does not meet the criteria for listing under section 112(c)(3).

Also, EPA is proposing that the self-service coin-operation area source category not be listed under section 112(c)(3) for regulation. Due to the small number of existing facilities (about 200), amount of emissions (about 78 Mg/yr (86 tpy)) from these sources, and negative growth rate, regulation of this source category is not warranted.

II. Background

On November 25, 1980 (45 FR 78174), EPA proposed new source performance standards (NSPS) to limit emissions of volatile organic compounds (VOC's) from new, modified, and reconstructed perchloroethylene (PCE) dry cleaners under the authority of section 111 of the Clean Air Act (CAA). On December 26, 1985 (50 FR 52880), EPA published a Notice of Intent to List PCE as a potentially toxic air pollutant to be regulated under section 112 of the CAA and solicited information on the potential carcinogenicity of PCE. Perchloroethylene is the predominant solvent used in dry cleaning. It has chemical and physical properties which make it the most desirable solvent available for the dry cleaning of fabrics. Information was also requested on applicable emission control equipment and the associated level of control achievable.

Subsequent to the EPA's issuance of the 1980 proposed rule and to the EPA's Notice of Intent to List and possible regulation of PCE emissions from dry cleaners under section 112, a private citizens group from Oregon, Francis P. Cook, et al., brought suit against the Administrator of EPA to compel him to issue a final rule regulating emissions from PCE dry cleaners under the authority of section 111 of the CAA. The EPA and plaintiffs negotiated a settlement of the lawsuit whereby EPA agreed to enter into a Consent Decree. The U.S. District Court for the District of Oregon entered the Consent Decree on March 16, 1990. In the Consent Decree, the EPA Administrator agreed to sign proposed national emission standards for hazardous air pollutants (NESHAP) for PCE dry cleaning facilities within 1 year and promulgate the standard within 2 years following enactment of the new amendments to the CAA. Because the CAA amendments were enacted on November 15, 1990, the NESHAP for dry cleaning facilities must be proposed by November 1991 and promulgated by November 1992.

The EPA is proposing to regulate PCE emissions from dry cleaners under authority of section 112 of the CAA Amendments because this pollutant is included on the list of hazardous air pollutants (HAP's) found in section 112(b).

A notice announcing the withdrawal of the proposed NSPS for regulating VOC emissions from PCE dry cleaners under section 111 is published elsewhere in today's Federal Register.

III. National Emission Standards for Hazardous Air Pollutants Decision Process

A. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development

Title III of the Clean Air Act (CAA) Amendments of 1990 was enacted to help reduce the increasing amount of nationwide air toxics emissions. Under Title III, section 112 was amended to give EPA the authority to establish national standards to reduce air toxics from sources that emit one or more hazardous air pollutant (HAP). Section 112(b) contains a list of HAP's, which are the specific air toxics to be regulated by national emission standards for hazardous air pollutants (NESHAP). Section 112(c) directs EPA to use this pollutant list to develop and publish a list of source categories for which a NESHAP will be developed. The EPA must list all known categories and subcategories of "major sources" (defined below) which emit one or more of the listed HAP's. Area source categories selected by EPA for NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in aggregate, pose a "threat of adverse effects to health and the environment." The CAA Amendments require this initial list of source categories to be proposed by November 1991 and a schedule of their NESHAP promulgation dates to be proposed by November 1992.

B. Criteria for Development of National Emission Standards for Hazardous Air Pollutants

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112, as amended. The statute requires the standard to reflect the maximum degree of reduction in emissions of HAP's that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, and any non-air quality health and environmental impacts, and energy requirements for control levels more stringent than the maximum achievable control technology (MACT) floors (described below). The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures which:

(A) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) Enclose systems or processes to eliminate emissions,

(C) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

(E) Are a combination of the above (Section 112(d)(2)). To develop a NESHAP, EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

If sources in the source category are major sources (the potential to emit, considering controls, 9.1 Mg/yr [10 tpy] or greater of any one HAP or 22.7 Mg/yr [25 tpy] or greater of total HAP's), then a MACT standard is required. The level of control corresponding to the MACT floor needs to be determined as a starting point for developing the regulatory alternatives.

C. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors"

The Act directs the Administrator to list categories and subcategories of major sources and area sources which emit one or more of the HAP's listed in section 112(b) [CAA section 112(c)]. The Administrator shall list all major

sources which emit HAP's. The Administrator shall list those area source categories and subcategories which he finds present a threat of adverse effects to human health or the environment warranting regulation. Once EPA has identified the specific source categories or subcategories of major sources and area sources that it intends to regulate under section 112, it must set MACT standards for each and must set such standards at a level at least as stringent as the "floor," unless it regulates area sources under section 112(d)(5) as described below. Congress provided certain very specific directives to guide EPA in the process of determining the regulatory floor.

Congress specified that EPA shall establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable * * *" [CAA section 112(d)(2)]. In addition, Congress limited the Agency's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" [CAA section 112(d)(3)]. Congress provided that existing source standards could be less stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources [CAA section 112(d)(3)].

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set a MACT standards that is no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory [CAA section 112(d)(1)]. Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor.

In addition, the Act provides the Administrator further flexibility to regulate area sources. Section 112(d)(5) provides that in lieu of establishing MACT standards under section 112(d), the Administrator may promulgate standards which provide for the use of "generally available control technologies or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT "floors" described above. Moreover, for source categories subject to standards promulgated under section 112(d)(5), EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. As stated previously, MACT is required for major sources. If all or some portion of the sources emits less than 9.1 Mg/yr (10 tpy) of any one HAP (or less than 22.7 Mg/yr [25 tpy] of total HAP's), then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach, MACT for major sources and GACT for area sources. In other cases, it may be appropriate to regulate both major and area sources in a source category under MACT.

The next step in establishing a MACT or GACT standard is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the most plausible regulatory alternative to reflect the appropriate MACT or GACT level.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the Agency considers the achievable reduction in emissions of HAP's (and possibly other pollutants that are co-controlled), the cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes sections of applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, EPA reaches a final decision and promulgates the standard.

IV. Summary of Proposed Standards

Today's proposed standards would regulate emissions of perchloroethylene (PCE) from new and existing dry cleaning facilities in the industrial and commercial sectors of the dry cleaning industry. Industrial dry cleaners (Standard Industrial Classification [SIC] 7218) include the largest dry cleaning plants that primarily supply rental services of uniforms and other items to business, industrial, and institutional customers. Commercial dry cleaners (SIC 7216) are the most common type of dry cleaning facilities, including small, independently operated neighborhood shops or franchise shops. Coin-operated dry cleaners (SIC 7215) are usually part of laundromats where dry cleaning is offered on either a self-service or an over-the-counter basis. These facilities provide low cost dry cleaning without pressing, spotting, or associated services.

As authorized under section 112(h) of the Clean Air Act (CAA), the proposed standards consist of a combination of equipment, work practices, and operational requirements to provide the best demonstrated PCE emission control for vented and fugitive emissions. Owners or operators of major and area source dry-to-dry machines that use PCE would be required to install and operate a carbon adsorber, refrigerated condenser, or equivalent device to control vented emissions from dry cleaning machines Owners or operators of major source transfer machines would be required to install and operate a carbon adsorber or equivalent control device.

Owners or operators of existing area source transfer machines would be allowed to retain their refrigerated condenser; however, existing uncontrolled and new area source transfer machines would be required to install a carbon adsorber or equivalent control device. Owners or operators are required to operate and maintain the control equipment according to procedures specified in the regulation (Section 63.322). They would also be required to use pollution prevention procedures, such as good operation and maintenance, for both dry cleaning machines and auxiliary equipment (such as filters, muck cookers, stills, and solvent tanks) to prevent liquid and vapor leaks of PCE from these sources. A weekly inspection and maintenance program would be required to prevent and correct solvent losses when detected. These solvent losses can occur from leaks or from equipment that is broken or not operating properly. Draining of cartridge filters and storage of waste in tightly sealed containers would be required to reduce PCE emissions before disposal.

For purposes of the General Provisions (40 CFR part 63, subpart A) to be proposed in the **Federal Register** in the near future, a transfer machine that is consuming 7,600 liters per year (1/yr) [2,000 gallons per year (gal/yr)] or more of PCE or a dry-to-dry machine that is consuming 11,700 1/yr (3,100 gal/yr) or more of PCE would be considered a major source.

The proposed standards requires the owner or operator of each dry cleaning facility to inspect the following components at least weekly to ensure that no liquid or vapor hazardous air pollutant (HAP) leaks are present: Hose connections, unions, couplings, and valves; machine door gaskets and seatings; the filter head gasket and seating; pumps; solvent base tanks and solvent and waste storage containers; water separators; filter sludge recovery; distillation units; divertor valves; saturated lint from the lint basket; and cartridge filters. If a leak is found, repair of the leak or placing a purchase order for repair parts within 3 days would be required.

The proposed standards require cartridge filters to be drained in their housings for 24 hours. All PCE and PCE-containing waste would be required to be stored in tightly sealed, nonreactive containers.

No control is required for the commercial area subcategory of existing dry-to-dry machines consuming less than 830 1/yr (220 gal/yr) of PCE and existing transfer machines consuming less than 1 100 1/yr (300 gal/yr) of PCE. However, owners or operators of these machines must maintain records of solvent consumption to verify that no control is required.

Initial notification reports of operations (including design capacity of the machine, the type of emission control device being used and its efficiency) are required from all existing controlled and uncontrolled facility owners or operators. The proposed standards require an initial compliance report from facility owners or operators subject to the standards to ensure that compliance is being achieved. In addition, an initial report of solvent consumption is required to verify applicability. No recurring reports are required.

The proposed recordkeeping requirements include documentation of PCE consumption, weekly PCE liquid and vapor leak inspections, and periods of desorption if a carbon adsorber is used to achieve compliance with the standards. All records must be maintained for a period of 5 years. This is consistent with the General Provisions (40 CFR part 63, subpart A) to be proposed in the **Federal Register** in the near future. Concerning specified time periods for achieving compliance, a new dry cleaning facility must achieve compliance upon startup. Phase-in compliance periods are allowed for existing dry cleaning facilities. Dry cleaning machines with a design capacity of greater than 22.7 kg (50 lb) must achieve compliance within 18 months of the date of promulgation. Those machines with a design capacity of 22.7 kg (50 lb) or smaller must achieve compliance within 36 months of the date of promulgation.

Equivalent systems of emission reduction may be used to achieve compliance with the standards in place of those prescribed in the proposed regulation if test data demonstrating equivalent performance of the equipment are submitted to and approved by the Administrator.

These standards will be codified under a new part 63 of title 40 of the Code of Federal Regulations. A notice which proposes General Provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act (CAA) as amended November 15, 1990, will be published in the **Federal Register** in the near future. The General Provisions, to be located in subpart A of part 63, codify procedures and criteria to implement emission standards for stationary sources which emit one or more of the substances listed as HAP's in Section 112(b) of the Act. The General Provisions eliminate the need to repeat general information and requirements within these standards.

V. Summary of Environmental, Energy, and Economic Impacts

A. Facilities Affected by These National Emission Standards for Hazardous Air Pollutants

There are approximately 25,200 existing commercial and industrial dry cleaning facilities throughout the country. Approximately 62 percent of this total have already installed emission control equipment on dry cleaning machines to comply with Occupational Safety and Health Administration (OSHA), State, or local requirements and would not be subject to additional control requirements. About 9,700 existing commercial and industrial dry cleaning facilities are uncontrolled and would be subject to the standards. Of these facilities subject to the standards, approximately 3,700 would be required to install control devices. Based on the projected zero growth rate of the commercial sector, it is estimated that the only newly constructed commercial dry cleaning facilities covered by the proposed standards during the 5-year period from 1991 to 1996 would be the approximately 7,400 new facilities replacing those facilities that have retired. These uncontrolled facilities would be required to install control devices under the proposed regulation. The industrial dry cleaning sector is projected to decline during the 5-year period from 1991 to 1996 because many of these facilities are switching from solvent use to the use of water and detergent; therefore, no newly constructed industrial facilities are projected.

The following discussions of the impacts of the proposed standards include maximum projections based on the estimated 9,700 existing commercial and industrial dry cleaning facilities that are uncontrolled, without regard to those facilities that might be subject to the consumption cutoff. The discussions also include lowest possible projected impacts based on the estimated 3,700 facilities that would be subject to the standards when the consumption cutoff is taken into consideration.

B. Air

The proposed standards would reduce nationwide emissions of perchloroethylene (PCE) from existing dry cleaning facilities by a maximum of about 26 percent in 1996 compared to the emissions that would result in the absence of the proposed standards.

Considering facilities that may be exempted by the consumption cutoff, the reduction in nationwide emissions for existing facilities could be about 13 percent. In the absence of a regulation, existing dry cleaning facilities are projected to emit 83,700 Mg (92,300 tons) of PCE in 1991. In 1996, existing dry cleaning facilities are projected to emit about 45,300 Mg (49,900 tons) of PCE when controlled to the level of the proposed standards, a reduction of 16,000 Mg (17,600 tons). Considering facilities that may be exempted, existing dry cleaning facilities could emit about 60,700 Mg (66,900 tons) of PCE, a reduction of 7,700 Mg (8,500 tons). Emissions in 1996 are projected to be lower in the absence of the standards due to the current industry trend toward increased control.

For newly constructed dry cleaning facilities, nationwide emissions of PCE would be reduced by approximately 5 percent compared to the emissions that would result in the absence of the proposed standards. The lower percentage in emission reduction is attributed to the current available market of new dry cleaning machines being comprised almost exclusively of dry-to-dry machines with built-in refrigerated condenser controls. No newly constructed facilities would be exempted by the consumption cutoff. Newly constructed facilities are projected to emit 11,300 Mg (12,400 tons) of PCE in 1996 when controlled to the level of the proposed standards, a reduction of 1,820 Mg (2,000 tons). Annual emissions of PCE from a typical new or existing dry cleaning facility with one 15.9-kg (35-lb) dry-to-dry machine controlled to the level of the standards are projected to be 1 Mg (1.1 tons) in 1996.

C. Water, Solid Waste, and Noise

The water quality impact associated with this proposed standard is considered small. The impact of the proposed standard on water quality would be caused by PCE in the aqueous wastes generated by the carbon adsorbers and refrigerated condensers. During regeneration (solvent desorption) of the carbon adsorber, the PCE is collected in the steam condensate. The water removed from the dry cleaning system by the refrigerated condenser also contains PCE.

When using a carbon adsorber or refrigerated condenser, the effluent water stream from the dry cleaning process may contain up to 150 parts per million (ppm) PCE in water by weight. Based on differing wastewater generation rates, a refrigerated-condenser controlled machine produces 0.03 kg (0.07 lb) of PCE per year and a carbon-adsorber controlled machine generates 0.85 kg (1.9 lb) PCE per year. It is estimated that the total amount of PCE in wastewater generated nationally by dry cleaners in the absence of the proposed standards in 1996 would be about 6 Mg (7 tons) per year. By adopting the proposed standards, wastewater PCE emissions could be about 9 Mg (10 tons) in 1996, an increase of 4 Mg (5 tons) per year. Considering facilities that may be exempted, wastewater PCE emissions could be about 7 Mg (8 tons) in 1996, an increase of 1 Mg (1.1 tons) per year. This PCE-containing wastewater, which is routed for disposal at a publicly owned treatment works, is considered insignificant.

The solid waste impact of the proposed standards is considered insignificant. The activated carbon used in carbon adsorbers must eventually be replaced. Replacing the carbon would create new solid wastes; however, this replacement is expected to occur only at 20-year intervals. It is estimated that the increase in national solid waste impacts for both new and existing dry cleaning machines could be about 600 Mg (700 tons) of carbon discarded approximately every 20 years, or an average of about 30 Mg (33 tons) of carbon every year. Considering facilities that may be exempted, the solid waste impact could be about 170 Mg (190 tons) of carbon discarded approximately every 20 years, or an average of about 8 Mg (9 tons) of carbon every year. This PCE waste is picked up by a hazardous waste collection service that recovers hazardous air pollutants (HAP's) from the waste before disposing of the waste as specified under the Resource Conservation and Recovery Act (RCRA).

There are no noise impacts associated with this proposed standard.

D. Energy Impacts

The national energy impacts associated with the proposed standards are considered small. The total increase in annual electricity use resulting from the proposed standards for existing dry cleaning facilities in 1996 would be about 9 gigawatt hours per year (GWh/yr) [30,700 million British thermal units per year (Btu/yr)]. The total increase in electricity use resulting from the proposed standards for all newly constructed dry cleaning facilities in 1996 would be about 2 GWh/yr (6,800 million Btu/year). This increased electricity use, which results from operating fans on carbon adsorbers or from cooling the coils of the refrigerated condensers and steam for desorbing carbon adsorbers, is equivalent to about 1.9 million liters [11,700 barrels (bbl)] of fuel oil per year for electrical generation for existing facilities and about 410,000 liters (2,600 bbl) of fuel oil per year for electrical generation for newly constructed facilities. Considering facilities that may be exempted, the total increase in annual electricity use resulting from the proposed standards for existing dry cleaning facilities in 1996 could be about 4 GWh/yr (13,700 million Btu/yr), which is equivalent to about 830,000 liters (5,200 bbls) of fuel oil per year.

Electricity requirements for a typical dry cleaning facility with one 15.9 kg (35-lb) dry-to-dry machine are projected to be 5,200 kilowatt-hours per year (kWh/yr) (18 million Btu/yr) in 1996 if the facility remains uncontrolled. By adopting the proposed standards, the electricity requirement for this facility is expected to increase to about 5,900 kWh/yr (20 million Btu/yr) in 1996. The electricity requirements for an uncontrolled 15.9-kg (35-lb) transfer machine are about 6,400 kWh/yr (22 million Btu/yr). Under the proposed standards, the energy requirements would increase to 6,600 kWh/yr (23 million Btu/yr). The proposed standards result in a nominal increase of 11 GWh/yr (37,500 million Btu/yr) (6 percent) in annual nationwide electricity use for the dry cleaning industry. Considering facilities that may be exempted, the total increase in energy requirements could be about 9 GWh/yr (30,700 million Btu/yr) (5 percent).

E. Cost Impacts

Under the proposed NESHAP, the nationwide annualized costs for new dry cleaners would increase by about $0.4 million, a projected increase of about 5 percent over the nationwide annualized costs at the regulatory baseline.

Under the proposed NESHAP, nationwide annualized costs for control equipment for existing dry cleaners would increase by about $8 million. This projected increase would be about 40 percent over the nationwide annualized costs at the regulatory baseline. Considering facilities that may be exempted, the costs for control equipment could be about $2 million, a 10-percent increase.

To comply with the proposed standards, the initial capital cost incurred by a typical new source such as a 15.9-kg (35-lb) dry-to-dry machine would be about $6,800 if installing a carbon adsorber or about $6,300 if installing a refrigerated condenser. The annualized cost incurred by this typical

source to operate the control device would be about $3,800 per year if installing a carbon adsorber or about $1,700 per year if installing a refrigerated condenser.

The total nationwide capital costs for control devices over the baseline would be about $63 million in 1996. The total nationwide annualized costs for control devices over the baseline would be about $8.4 million in 1996. Considering facilities that may be exempted, the nationwide capital costs could be about $26 million in 1996 and the nationwide annualized costs could be about $2.4 million.

F. Economic Impacts

No price increase or significant economic impacts are expected for the major sources due to cost savings from reduced solvent usage.

Because almost all of the commercial area source category is composed of small businesses, a more detailed economic analysis was conducted to: Assess the impacts of the proposed standards on firms based on capacity utilization and income level; evaluate the availability of funds to firms of different financial conditions and different output levels; estimate the cost of capital for firms in poor, average, and good financial condition; and estimate changes in firm financial status and projected number of firms that may have problems obtaining financing due to the proposed standards (see Docket No. A–88–11, Item No. II–C–38).

For the commercial area source category, the economic analysis did indicate that many firms within the class of sources with annual gross receipts less than $100,000 would be affected significantly by the proposed standards. Below this annual receipt level are found the very smallest family-operated businesses with low annual PCE consumption and few employees. Due to economic considerations, no control is required for this class of sources under generally available control technology (GACT).

For purposes of the proposed standards, the annual gross receipt value of $100,000 was correlated to PCE consumption levels because the amount of PCE consumed by a facility is readily available information. Therefore, this class of sources, which includes each dry-to-dry machine that consumes less than 830 1/yr (220 gal/yr) of PCE and each transfer machine that consumes less than 1,100 1/yr (300 gal/yr) of PCE, is not required to control emissions. However, the owner or operator is required to maintain records of PCE consumption for each machine below the specified consumption level and to submit an initial report documenting that the amount of PCE consumed is below the specified level.

The analysis of economic impacts indicates that the proposed standards would not have significant economic effects for the remaining area sources. The projected price increase associated with the proposed standards would range from 0 to 0.37 percent. Output adjustments (changes in the amount of clothes cleaned) are estimated to be a reduction of 0.2 percent. This translates into a potential 30 closures at the most out of 25,000 firms in the United States.

Although the analysis projects less than 30 closures based on the output adjustment, one potential consequence of the proposed standards is that some firms may have difficulty in obtaining the required funds to purchase the control equipment from traditional loan sources such as banks. To assess this potential problem, three levels of model financial condition were developed for the dry cleaning industry as a whole using data from Dunn Analytical Services. A model of firms' financial ratios was developed to be representative of the lower quarter of the sample of almost 1,000 firms in the Dunn Analytical Services data base. However, the fraction of the firms facing additional control costs due to the regulation in below average financial condition is not known. Therefore, two financial scenarios were developed. For one, the smaller quarter (by revenue) of all dry cleaning firms was assumed to be in below average financial condition (Scenario I). For the other (Scenario II), the financial condition was assumed to be independent of size (25 percent are assumed to be in below average financial condition at each revenue level).

Firms in below average financial condition were projected to be unable to obtain a bank loan to pay for the control equipment with 1 year of retained earnings. These firms would have to obtain another source of financing (vendor-aided [see Docket No. A–88–11, Item No. II–B–41], relatives, personal assets, etc.) or either close or sell their firm. Under Scenario I, none of the firms within the class of sources with gross receipts of $100,000 a year or greater would be in below average financial condition. Under Scenario II, approximately 670 would be in below average financial condition and face potential difficulty in obtaining the required funds to purchase the control equipment. Under either scenario, no difficulty obtaining the needed control equipment is projected for firms in average or above-average financial condition. Thus, the number of firms facing potential difficulty in obtaining funds to purchase control equipment is between 0 and 670. This information, coupled with the market estimate of a 0.2-percent change in the amount of clothes cleaned and a net closure of less than 30 firms, leads to the conclusion of no significant impact on the dry cleaning industry. The few firms with difficulty obtaining bank financing will either obtain other financing, sell, or close the business.

VI. Rationale

A. Selection of Pollutants and Source Category for Control

Two pollutants, perchloroethylene (PCE) and methyl chloroform (1,1,1-TCA), are included in the list of hazardous air pollutants (HAP's) listed under section 112(b) of the 1990 Amendments to the Clean Air Act (CAA) for regulation. Both PCE and 1,1,1-TCA are emitted by dry cleaning facilities. However, for the following reasons, only PCE emissions at dry cleaning facilities are being regulated.

Only about 50 dry cleaning facilities are known to use 1,1,1-TCA (methyl chloroform) and, according to an industry trade association, (Docket No. A–88–11, Item No. II–E–80), all of these facilities already use equipment to control these emissions. These controlled emissions of 1,1,1-TCA are low (380 Mg/yr or less) and represent only about 0.001 percent of the total annual 1,1,1-TCA emissions of 336,000 Mg. Moreover, the production and use of 1,1,1-TCA is being phased out by 2002 under Title VI of the CAA. Therefore, the regulation of 1,1,1-TCA emissions from dry cleaning facilities under this proposed rulemaking is not necessary.

Perchloroethylene emissions from the dry cleaning industrial and commercial major source categories and each of their subcategories and the commercial area source category and its subcategories are being regulated under section 112(d) of the CAA. Because of its volatility and its high volume use as a commercial solvent, combined with its long atmospheric residence times and documented emissions into the atmosphere. PCE has been a pollutant of concern to EPA because of its potential adverse health and environmental effects ("Health Assessment Document for Tetrachloroethylene [Perchloroethylene]", EPA–600/8–82/005F [Docket No. A–88–11, Item No. II–I–16]) and addendum to Health Assessment Document for Tetrachloroethylene Draft EPA/600/8–82/005FA and response to issues and data submissions on the carcinogenicity

of tetrachloroethylene, Draft EPA/600/6-91/002A.

The EPA is concerned with PCE because exposure to PCE has resulted in cancer in laboratory animals. The agency has consulted with the EPA Science Advisory Board. The following is their view on the carcinogenicity of PCE. "It is the Committee's view that the major issues arising from the assessment of perc have not changed over the past four years, and that SAB's previous response remains appropriate. The available scientific evidence confirms that perchloroethylene should be considered as an animal carcinogen, based on three endpoints in two species: liver tumors in male and female mice, kidney tumors in male rats, and possibly, mononuclear cell leukemia in male and female rats. Complications within each study and in their biological interpretations have made it difficult to categorize this compound. We do not consider the evidence strong enough to classify this compound as a probable human carcinogen (i.e., B2); on the other hand, the evidence for carcinogenicity is stronger than for most other compounds classified as possible human carcinogens (i.e., C). Therefore, in the spirit of the flexibility encouraged by the Guidelines, our best judgement places this compound on a continuum between these two categories."

Studies have confirmed the presence of PCE in ambient air in many areas of the U. S. at levels that exceed background concentrations ("Cancer Risk from Outdoor Exposure to Air Toxics", Volume II, EPA-450/1-90/004b [Docket No. A-88-11, Item No. II-I-18]). As a result, public exposure to PCE may occur in many areas of the U.S. dry cleaning facilities are the primary source of these PCE emissions (about 92,000 tpy).

Therefore, given the available evidence on the potential health effects of PCE, the Administrator is proposing in response to a court-ordered schedule to determine that the dry cleaning commercial area source category and subcategories present a "threat of adverse effects" and to add them to the list of source categories under section 112(c). Thus, EPA is proposing to regulate the dry cleaning major and area source categories and subcategories to address the potential adverse effects to human health or the environment associated with exposure to PCE. The Agency requests comments on this proposed determination.

Section 112(k) directs EPA to develop a comprehensive strategy to reduce hazardous air pollutants from area sources. The EPA must develop this strategy by November 15, 1995. The strategy must identify not less than 30 HAP's which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas. It further requires EPA to develop a program to characterize the sources of HAP emissions and to focus on area sources and the contribution such sources make to public health risks from HAP's [Section 112(k)(2)(B)]. The strategy must also assure that section 112(d) standards are set for sufficient categories or subcategories of area sources to account for 90 percent or more of aggregate emissions of the 30 identified HAP's. (Section 112(c) also provides that such source categories must be listed under that section no later than November 15, 1995.) Section 112(k)(3)(F) requires the Administrator to assure that all sources are in compliance with standards not later than November 15, 1999. Moreover, section 112(k)(3)(E) provides that the requirement to develop an area source strategy shall not be interpreted to preclude or delay implementation of action with respect to area sources of hazardous air pollutants under consideration pursuant to the Clean Air Act (or any other law) and that may be promulgated before the strategy is prepared.

The EPA is in the process of developing such a strategy. Nevertheless, the Agency is today proposing standards for the PCE dry cleaning source categories in response to a court-ordered schedule. In developing this proposal, EPA has not conducted the type of analysis contemplated under section 112(k) because of the relative short time in which to develop the proposed rule. However, EPA recognizes the importance of developing information in regulating area sources consistent with section 112(k)(2)(B).

This proposal does not establish a precedent for regulatory action with respect to various other categories of sources. Until such time as the section 112(k) strategy is developed, EPA will consider on a case-by-case basis the appropriateness of establishing section 112 standards for other area source categories and the appropriate threshold for determining whether particular area source categories result in adverse effects to human health or the environment sufficient to warrant regulation. The EPA requests comment on the appropriate criteria to be used in determining whether regulation is warranted for particular area sources and whether the evidence used in this rulemaking provides an adequate basis for such a determination.

B. Selection of Emission Points to be Covered by the Standards

Two types of dry cleaning machines are used for cleaning clothes, transfer and dry-to-dry machines. The transfer machine consists of two separate machines, a washer and dryer. Much like washers and dryers found in homes, the clothes are manually transferred between machines. With the dry-to-dry machines, both the wash and dry cycles are contained within a single machine.

Emissions from dry cleaners using PCE occur from two basic types of sources: (1) Vented emissions from equipment, and (2) fugitives from sources such as clothing transfer and handling, and process equipment leaks. Perchlorethylene emissions also occur from waste materials, such as spent filters from carbon absorbers; however, these wastes are disposed of off-site and are regulated as solid waste under the Resource Conservation and Recovery Act (RCRA).

From vented equipment, the most significant point of PCE emissions is the dryer vent where residual PCE or vapors are exhausted from the dryer or dry-to-dry machine during the aeration step. For a transfer machine, the washer vent is another point of emissions. Carbon absorbers or refrigerated condensers can be used to control these emissions. The proposed standards would cover emissions from dry-to-dry machines and the washer and dryer vents of transfer machines, which are the major process emission points of a dry cleaning facility.

Other emission points are associated with the auxiliary equipment that is used to filter and distill the dirty solvent. These emission points include vented emissions from muck cookers, oil cookers, and other stills. The cleaned PCE is recovered and recirculated for future dry cleaning cycles. In most cases, this recovered PCE and its associated emissions are routed back into a PCE containing section of the dry cleaning machine, such as the solvent base tank. The emissions resulting from this process, however, are not significant.

About one-half of the PCE emissions at a dry cleaning facility are fugitive emissions. Fugitive emission sources include evaporation during clothing transfer and handling, equipment leaks, emissions during solvent transfer (loading and unloading), and evaporation of solvent from stored solid wastes (such as spent filters and distillation residues). Even though these fugitive emissions are much more difficult to quantify, the use of work

practices can prevent or reduce fugitive emissions.

Fugitives are also controlled with the OSHA's adoption on January 19, 1989 (54 FR 2670), of a 25 ppm permissible exposure level (PEL) for worker exposure to PCE in an effort to reduce the health effects from worker exposure to PCE. Based on technical analyses, OSHA maintains that it is feasible for the dry cleaning industry to achieve this level of PCE emissions with a dry-to-dry machine using engineering and work practice controls (54 FR 2689; January 19, 1989).

The OSHA is allowing a 4-year phase-in period for compliance. The PEL will "be achieved by any reasonable combination of engineering controls, work practices, and personal protective equipment effective September 1, 1989, through December 30, 1992" (54 FR 2921). After this transitional period, the PCE limits must be achieved without personal protective equipment. To some extent, fugitive emissions from dry cleaners will be reduced through work practices adopted by owners or operators to meet the OSHA limit. However, no specific guidelines for work practices to reduce fugitives were given in the OSHA regulation. To ensure that dry cleaning facility owners and operators are adopting effective work practices to reduce fugitives, specific pollution prevention requirements are included in the proposed standards, such as covering solvent containers, cleaning lint traps, and minimizing door opening time.

The solid wastes created by a dry cleaning facility are regulated as a hazardous waste under RCRA. However, the amount of PCE remaining in the waste is, in many cases, reduced at the facility prior to disposal to recover solvent. Draining spent carbon filters in their housing to recover PCE is a standard industry practice. Requiring this PCE reduction practice for all dry cleaning facilities subject to this NESHAP would minimize air emissions from the solid waste while it is retained on site. Because reduced PCE waste is carried off-site periodically by a solid waste collection firm, air emissions from solid waste at a dry cleaning establishment are minimal.

C. Selection of Basis of Proposed Standard for New and Existing Sources—Selection of Maximum Achievable Control Technology or Generally Available Control Technologies

Major Sources. Section 112 of the 1990 CAA Amendments defines a major source as any stationary source that emits 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) or more of total HAP's. The CAA states that new major sources must achieve the maximum achievable control technology (MACT), which is the level of emission control already achieved in practice by the best controlled similar source. The CAA further states that emission standards promulgated for existing sources may be less stringent than standards for new sources; however, standards for existing sources must not be less stringent than the average level of emission reduction achieved by the average of the best performing 12 percent of the existing sources.

Dry-to-Dry Machines. For new major dry cleaning facilities, the only significant factor for determining similarity in sources is the type of machine used. Two basic types of machines are used in the dry cleaning industry: Dry-to-dry machines and transfer machines. For dry-to-dry machines, it has been demonstrated that the maximum degree of PCE emission reduction from machine vents and exhausts can be achieved by installing either a carbon adsorber or a refrigerated condenser. Dry-to-dry machines can be either vented or not vented. The no-vent machines have built-in control devices that recirculate air within the machine and do not vent it to the atmosphere. A carbon adsorber or a refrigerated condenser achieves 95 percent emission reduction when applied to a dry-to-dry machine. This level of emission reduction is considered MACT for new sources. At present, both of these control devices are used widely in the dry cleaning industry. They are readily available and economically feasible as a method of control.

According to a survey conducted by a major dry cleaning trade association (Docket No. A–88–11, Item No. II–D–26), about 50 percent of existing dry-to-dry machines are achieving a level of 95 percent emission reduction in PCE emissions from vents or exhausts by installing and operating either a carbon adsorber or a refrigerated condenser. This represents MACT for existing dry-to-dry machines because it is the most effective control and more than 12 percent are achieving it.

Transfer Machines. Vendors indicate that no new transfer machines have been sold in recent years and this trend is expected to continue. For transfer machines, it has been demonstrated that the maximum degree of PCE emission reduction from machine vents and exhausts can be achieved by installing a carbon adsorber, which achieves 95 percent emission reduction. Although a refrigerated condenser achieves 95 percent emission reduction when applied to a transfer machine dryer, it achieves only 85 percent emission reduction when applied to a transfer machine system. When a refrigerated condenser is installed on a transfer machine system, both the washer and the dryer vents are routed to this condenser. Because the vented exhaust from the washer vent passes through the condenser only once, the transfer washer achieves a lower efficiency (about 70 percent) than the transfer dryer, thereby lowering the overall efficiency of the entire transfer machine system to 85 percent. Therefore, a refrigerated condenser applied to a transfer machine is not considered MACT.

For existing transfer machines, the best 12 percent of the machines in this category are achieving a level of 95 percent emission reduction in PCE emissions. They are achieving this level by installing and operating carbon adsorbers. Approximately one-third of all the existing transfer machines are achieving this level of control.

Area Sources. Section 112 of the CAA defines an area source as any stationary source of HAP's that is not a major source. Based on this definition, a dry cleaning facility that emits less than 9.1 Mg/yr (10 tpy) of any one HAP would be considered an area source. In Section 112(d)(5), the Act further states that the Administrator may elect to promulgate a standard based on generally available control technologies (GACT) or management practices to control HAP emissions from area sources instead of applying the MACT.

Although the Act provides no specific criteria for what constitutes GACT, the legislative history of the Senate bill confirms that neighborhood dry cleaners are a prime example of a category of area sources for which GACT may be appropriate. In its report on S. 1630, the Senate Committee on Environment and Public Works explained as follows:

> For those categories of area sources which have been listed pursuant to section 112(c)(2), as amended, the Administrator has two regulatory options. First, the Administrator may establish a MACT standard for the category based on the considerations described above. In the alternative, the Administrator may require sources in the category to meet emissions limitations reflecting application of generally available control technology—that is, methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.
>
> This alternative regulatory option is provided to encourage control of area

sources. Listing area sources for control under this section is a discretionary authority with the Administrator. Experience under Section 112 indicated that pollutants and source categories will not get listed if the only regulatory regime which meets statutory requirements is considered too costly for the public health benefits to be achieved. By providing the Administrator with a regulatory tool less stringent than MACT for area sources, the legislation provides additional avenues for public health and environmental protection.

An example of generally available control technology (GACT) would be an equipment and operational standard for that portion of the dry cleaning industry which emits less than 10 tons per year of the dry cleaning solvent (perchloroethylene). An equipment standard is not an emissions limitation nor a limit on solvent consumption rates and does not require the sophisticated monitoring and modeling that may be necessary to determine compliance. Rather, an equipment standard would require neighborhood dry cleaning establishments to employ the commercially available systems associated with the lowest measured emissions, and may also specify operation and maintenance requirements for this equipment.[1]

Further, the full Senate adopted an amendment specifying that EPA is not required to conduct any residual risk review for area sources controlled under GACT. [See S. 1630 as passed by the Senate, Subparagraph 112(e)(8)(E).]

Therefore, the CAA Amendments of 1990 authorized the Administrator to use an alternative system for controlling area sources. Section 112(c)(3) requires a "finding" of a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate warranting regulation under this section). As discussed previously in Section V–A of this notice, the large number of area source dry cleaning facilities nationwide emit, in aggregate, a significant amount of HAP emissions and, therefore, cause an adverse threat to health and the environment.

Unlike MACT, no stringency "floor" is required for GACT; and costs, economic impacts, and the technical capabilities of plant owners or operators to operate and maintain emission control systems for area sources (see legislative history for the CAA) may be considered in determining GACT. As illustrated by the economic analysis, applying MACT to area source dry cleaning facilities would not be reasonable. Adopting GACT as the regulatory approach for those dry cleaning facilities that emit less than 9.1 Mg/yr (10 tpy) would not significantly decrease the overall amount of emission reduction achieved by the standards, and owners of those area source transfer machines that are currently controlled with refrigerated condensers would not incur retrofit costs. The retrofit capital cost ($7,000) for these facilities to replace their refrigerated condenser with a carbon adsorber would be too high given the small amount of emission reduction achieved.

Because the GACT option can consider costs and economic impacts, the Administrator is using the discretionary authority provided by section 112(d)(5) of the CAA to select GACT as the regulatory approach for area source dry cleaning facilities. For the most part, the level of emission control necessary to achieve MACT is also used widely by area source dry cleaning facilities and could be considered GACT. The only difference between MACT for major sources and CACT for area sources would be for existing dry cleaners that use refrigerated-condenser controlled transfer machines. As discussed in section II of this preamble, the GACT approach can be less stringent than MACT and can consider costs and economic impacts. It was determined that the economic impacts of requiring the owner or operator of an existing refrigerated-condenser controlled area source transfer machine to remove the refrigerated condenser and install a carbon adsorber is not reasonable, especially if the refrigerated condenser was purchased recently and the financing for it is not complete. Therefore, GACT for area sources would be identical to MACT for major sources except that transfer machines with existing refrigerator condenser controls (achieving 85 percent control) would not be required to upgrade to carbon adsorbers (achieving 95 percent control).

D. Selection of Format for the Proposed Standards

Several formats could be used to implement the control techniques selected as the basis for the proposed standards. Section 112(d) of the 1990 CAA Amendments requires that emission standards for control of HAP's be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) defines two conditions under which it is not feasible to prescribe or to enforce emission standards. These conditions are: (1) If the HAP's cannot be emitted through a conveyance device, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

Equipment Exhausts and Vents. Emission standards for controlling PCE allow for some flexibility in complying with the standards because any control technique may be used if it achieves the level of emission reduction represented by the standards. An emission limitation format could be a concentration limit, a percent reduction level, or a mass emission rate limit.

Both the concentration limit and the percent reduction level would require periodic performance testing by the owner or operator to demonstrate that the dry cleaning facility is achieving compliance. Because the cost of requiring an owner to conduct even a single periodic performance test is expensive ($3,000 to $5,000) compared to the cost of control equipment ($6,000 to $8,000), it would be economically unreasonable to require either of these two emission limit formats for these standards.

A mass emission limit format would place a limit on the total consumption of HAP per unit of articles cleaned, also known as "solvent mileage." Some members of the dry cleaning industry use the "solvent mileage" method to compute the pounds of articles that can be cleaned per drum of solvent. To determine "solvent mileage," a record of gallons of solvent bought and amount of clothes cleaned would have to be kept. However, the amount of recordkeeping necessary to compute solvent mileage to comply with this type of format (such as weighing each load of clothes prior to cleaning and tracking the amount of solvent consumed) would be burdensome for a small facility owner or operator.

In addition to being impractical and an economic burden on dry cleaner owners or operators to measure emissions or to compute solvent mileage for these sources, it would be difficult to enforce emission standards at several thousand dry cleaning facilities across the country, ensuring that each dry cleaner is achieving the emission standards. For these reasons, as authorized under section 112(h), an equipment standard requiring the use of a carbon adsorber, a refrigerated condenser, or an equivalent control device was selected to limit emissions from these sources.

Equipment Leaks. Based on dry cleaning machine test data, as much as 25 percent of the PCE emissions from an uncontrolled dry cleaning facility can be attributed to leaks from the dry cleaning

[1] S. Rep. No. 228, 101st Cong., 2nd Sess. 171–72 (1989).

equipment. Two possible formats for a standard to control these leaks are an emission limit standard or a work practice standard under section 112(h).

To require an emission limit for a leak standard, the leak sources would need to be enclosed so that the actual emission rate could be measured. Because this procedure would be impractical on the many potential leak sources on dry cleaning equipment, an emission limit format is not the preferred format for leaks.

Because control of fugitive equipment leaks requires maintenance of the dry cleaning equipment, EPA is proposing a work practice with a program to detect and repair leaks as the logical format. The work practice would specify the inspection time intervals and an inspection method to locate the leaks, and would limit the time period allowed to perform the required maintenance and repairs. The proposed inspection method requires only a quantitative determination of the presence of a leak (i.e., visual or use of a portable halogenated-hydrocarbon detector). Although the effectiveness of this work practice cannot be quantified precisely, EPA believes it would result in a substantial reduction of fugitive emissions. The work practice format has been selected for the proposed equipment leak standard because less time is required for demonstrating compliance, and the recordkeeping and economic impacts associated with this format are not burdensome.

In addition to this work practice, the proposed standards require owners and operators to perform certain pollution prevention practices (good housekeeping procedures) to reduce fugitives. These pollution prevention practices include minimizing door opening time and keeping solvent containers covered. Drums of PCE should be kept closed to avoid evaporation. They should be stored under cover to prevent rusting and should not be exposed to extreme heat or cold. Perchloroethylene should be transferred from a properly vented drum to the dry cleaning machine by pumping through piping connected directly to the small opening of the drum.

Although not required by the proposed standards, it is assumed that owners and operators would perform other pollution prevention practices, such as adhering to appropriate machine cycle times. Following these procedures would help ensure that the recently adopted OSHA PEL of 25 ppm is being met.

Solid Waste. A certain amount of solid waste materials containing PCE (100 to 1,000 kg [220 to 2,200 lb] gross volume of material/month) is generated during the dry cleaning process. If these wastes are not stored in tightly sealed containers, PCE will offgas into the air.

The solid waste generated by dry cleaning facilities is picked up by a hazardous waste collection service and taken off site for solvent reclaiming and disposal. Although the solid waste that is picked up is regulated under RCRA, work practices are needed to limit the amount of PCE emissions from these solid waste materials stored on site prior to pick up. Two possible formats are available for limiting the PCE emissions from waste materials: A limit on the concentration of PCE present in the waste or a work practice standard to reduce the PCE content in the waste materials prior to disposal.

Three different types of waste materials are generated by PCE dry cleaning facilities: (1) Regenerable filter wastes, (2) residue from solvent stills, and (3) used cartridge filters. The possible formats for a standard have been evaluated separately for each of these types of waste materials.

Regenerable filter wastes are typically heated in a muck cooker to drive off PCE. The PCE is then recovered by condensation. Although a concentration limit on the waste material after cooking would require good operation of the muck cooker to minimize the PCE content in the muck before disposal, this procedure is already standard industry practice for recovering solvent for reuse according to a leading dry cleaning trade association. In view of this, no specific PCE concentration limit is proposed, but work practices are included for the owner or operator to minimize PCE emissions from filter wastes before disposal.

Residue from solvent stills presents a case similar to that of the regenerable filters. Contaminated solvent is boiled at a temperature that volatilizes the solvent without volatilizing the contaminating greases or oils. The solvent vapor is then condensed and recovered. As with regenerable filter wastes, it is believed that residue from solvent stills will be reduced by this solvent recovery process in the absence of a standard. In view of this, no specific PCE concentration limit is proposed, but work practices are included for the owner or operator to minimize PCE emissions from stills prior to disposal.

Cartridge filters present a different case, however. These filters normally cannot be heated to recover PCE because most of these filters are designed to be disposable and, therefore, are not designed for ease of solvent reclamation. Instead, they are drained of excess solvent in their housings, stored, and picked up for off-site disposal. Performance tests for a concentration limit format would require the drying of used cartridges to a constant weight. This process can take 2 weeks or longer and cannot usually be performed without the use of laboratory facilities for the entire time, which would be expensive (ranging from $2,000 to $3,000), making performance testing economically unreasonable. Therefore, the Administrator is proposing a work practice standard under the authority of section 112(h).

The proposed work practice specifies a minimum drain time for cartridge filters. This format has the advantage of not requiring a lengthy performance test while maintaining the same control level. Therefore, a work practice standard was selected for cartridge filters. Moreover, EPA notes that according to a major dry cleaning trade association it is already industry practice for owners and operators of dry cleaners to drain their cartridge filters overnight.

For reasons of enforceability and to avoid imposing an excessive economic burden on dry cleaning facility owners and operators, work practices are being proposed to control PCE emissions from these sources. This format for the proposed standard is consistent with the provisions of section 112(h) of the CAA which states:

> If it is not feasible in the judgment of the Administrator to prescribe or enforce an emissions standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof * * *.

E. Selection of Equipment and Pollution Prevention Standards

Emissions of PCE from dry cleaning machines can occur from both equipment exhausts and vents as well as from equipment leaks. Control options that were evaluated for controlling PCE emissions from both of these emission sources are discussed in detail below.

Control Options for Dry Cleaning Machines

Vent control was the principal control option evaluated for reducing PCE emissions from the equipment exhausts and vents of dry cleaning machines. In evaluating vent control, two equipment options are available: Carbon adsorbers and refrigerated condensers. For control of vented process emissions from transfer machines, applying a carbon adsorber would achieve at least 95 percent PCE reduction. Applying a

refrigerated condenser to a transfer machine washer vent would achieve at least 85 percent PCE emission reduction. Refrigerated condensers used on transfer washers are one-pass systems and, therefore, are less efficient than carbon adsorbers or condensers applied to dry-to-dry machines. For dry-to-dry machines, both types of control equipment provide 95 percent control of vented process emissions.

Two other types of equipment for vent control were also considered but were not evaluated further. First, the Permac Consorba, an innovative type of German dry cleaning machine reputed to achieve reduction of PCE emissions in excess of 95 percent, was evaluated. The manufacturer claims that this machine includes an improved carbon adsorber used in series with a refrigerated condenser, and that this equipment contributes to significant reductions in PCE emissions relative to conventional machines. However, the manufacturer of this machine was not able to provide sufficient data to support its claim for this level of PCE emission reduction. In addition, EPA is not aware of any dry cleaning facility in this country using this type of machine in continuous commercial operation.

Second, the Diversitron® Solvation Solvent Recovery System was considered. This system is an add-on control device which consists of a tank partially filled with water and an anti-foaming agent, through which PCE vapors are bubbled. This process operates during the solvation recovery cycle, which is substituted for the normal deodorizing and aeration cycle on the dry cleaning machine. When using this procedure, a closed system is created and the amount of exhaust gases ducted to the atmosphere is reduced. Industry test data conducted on a dry-to-dry machine indicate that the Diversitron® Solvation Solvent Recovery System, with the solvation tank water and the dryer condenser cooling water inlet both at 70 °C (158 °F), is capable of achieving only 84 percent reduction of PCE vapors. However, if used in conjunction with a carbon adsorber, the Diversitron® Solvation Solvent Recovery System would be capable of achieving 95 percent PCE emission reduction. Because this system by itself achieves a lower percent emission reduction than either a refrigerated condenser or carbon adsorber, it was not evaluated further as a separate control equipment option.

Replacing PCE or with another type of solvent was another method of vent control that was also considered. The only readily available alternative solvents for dry cleaning are petroleum distillates, chlorofluorocarbon-113(CFC–113), and 1,1,1–TCA. Substitution of one of these solvents for PCE would eliminate PCE emissions; however, use of these solvents has serious disadvantages. The use of petroleum distillates is restricted due to its flammability. The solvent, CFC–113, is a less aggressive solvent with a prohibitive cost per gallon. Moreover, under the CAA, CFC–113 will be phased out by the year 2000. The chemical 1,1,1–TCA is a more aggressive solvent used mainly in leather and textile cleaning. However, the use of 1,1,1–TCA will be phased out by the year 2002 under Title VI of the CAA. Furthermore, different types of solvents require different types of dry cleaning machines, so that substituting one solvent for another may require extensive and costly modifications to existing dry cleaning machines. In view of the above-mentioned disadvantages, it would not be appropriate to require solvent substitution as a control option for this standard.

Therefore, only two principal control options, carbon adsorber and refrigerated condenser, were used in developing the regulatory alternatives for controlling vented emissions from dry cleaning machines.

Regulatory Alternatives for Major Source Dry Cleaning Machines

As stated in section I, the industrial source category and subcategories include all major sources. The subcategory of transfer machines within the commercial source category also includes major sources. Only one regulatory alternative was considered for major sources because the MACT control level for both major source dry-to-dry and transfer machines is identical—95 percent control efficiency. This level of control is achieved by over 12 percent of existing major sources and, therefore, represents the "floor" for existing sources. It is also the most stringent achievable level of control identified. Therefore, 95 percent control is consistent with the CAA definition of MACT for both new and existing sources. (See Section II of this notice for a discussion about the MACT decision process.) The regulatory alternative for major sources would require that at least 95 percent efficient vent control (carbon adsorber or refrigerated condenser) be installed on all new and existing major source dry-to-dry machines. Carbon adsorbers (which achieve 95 percent control efficiency) are the only type of control devices used on transfer machines by industrial dry cleaners. The only commercial size dry cleaning machine in the major source category is the 45.4-kg (100-lb) transfer machine, which would require use of a carbon adsorber to achieve 95 percent control efficiency. However, vendors report that no new transfer machines have been sold since 1988 and this trend is expected to continue. For these reasons, this regulatory alternative for major sources would require that carbon adsorbers (at least 95 percent vent control) be installed on all new and existing major source transfer machines.

The emission reduction expected under this regulatory alternative for major sources of HAP's is 3,300 Mg/yr (3,600 tpy). The estimated cost effectiveness over baseline for the approximately 250 major sources affected by this alternative ranges from a net savings of $500 (due to solvent savings) to a net cost of about $70, depending upon machine size and type. The economic impact analysis illustrates that this regulatory alternative would not have unreasonable costs or economic impacts on major sources.

Regulatory Alternatives for Commercial Area Source Dry Cleaning Machines

As shown in Table 1, three regulatory alternatives were considered in selecting the proposed standard for the commercial area source category and subcategories. As stated previously in Section I, the subcategories are dry-to-dry machines and transfer machines. The first two alternatives represent control levels under GACT, and the third alternative is MACT. (See Section II for a discussion of GACT.)

TABLE 1.—REGULATORY ALTERNATIVES FOR THE PERCHLOROETHYLENE DRY CLEANING NESHAP

Regulatory alternative	Level of vent control			
	Major sources (%)	Area sources		
		Dry-to-dry and new transfers (%)	Existing uncontrolled transfers (%)	Existing RC controlled transfers (%)
I	(95) CA	(95) RC or CA *	(85) RC	(85) RC
II	(95) CA	(95) RC or CA *	(95) CA	(85) RC
III	(95) CA	(95) RC or CA *	(95) CA	(95) CA

* Dry-to-dry machines are capable of achieving 95 percent control of PCE emissions by installing either a refrigerated condenser or a carbon adsorber. Transfer machines are capable of achieving 95 percent control by installing a carbon adsorber only.
CA=Carbon Adsorber
RC=Refrigerated Condenser

Regulatory Alternative I, the least stringent regulatory alternative, would require at least 95 percent reduction of vented process emissions from all new and existing dry-to-dry machines (installation of either a carbon adsorber or refrigerated condenser) and from all new transfer machines (installation of a carbon adsorber). This alternative would require at least 85 percent reduction (installation of a refrigerated condenser) for existing transfer machines.

Regulatory Alternative II is similar to Regulatory Alternative I in that it would require 95 percent emission reduction on all dry-to-dry machines (by applying either a carbon adsorber or refrigerated condenser) and 95 percent emission reduction on all new transfer machines (by applying a carbon adsorber). This regulatory alternative differs from Regulatory Alternative I in that it would require 95 percent emission reduction on all existing uncontrolled transfer machines, but 85 percent emission reduction from existing refrigerated-condenser controlled machines. This alternative was considered because the cost of removing an existing refrigerated condenser and replacing it with a new carbon adsorber would be very high, $16,800/Mg ($15,200/ton) PCE removed, whereas applying carbon adsorbers on uncontrolled machines would have a much lower cost at $1,800/Mg ($1,600 ton).

Regulatory Alternative III, is the most stringent regulatory alternative analyzed. It would require the same level of control as the selected alternative for major sources. This alternative would require 95 percent emission reduction for both dry-to-dry machines (application of either carbon adsorber or refrigerated condenser) and transfer machines (application of carbon adsorber). Under this alternative, owners or operators of existing refrigerated-condenser controlled transfer machines would be required to replace the condenser with a carbon adsorber.

Table 2 presents the costs, secondary impacts, and energy impacts associated with each of the three regulatory alternatives discussed above. Under Regulatory Alternative I, the 13,600 affected machines are expected to achieve an emission reduction over baseline of 18,900 Mg (20,800 ton) PCE/yr at an overall average cost effectiveness of $785/Mg ($713/ton) PCE removed. The cost effectiveness per machine ranges from $2/ton to $1,500/ton ($2/Mg to $1,600/Mg) PCE removed, depending upon machine size and type. The highest cost effectiveness would be incurred by a 11.3-kg (35-lb) dry-to-dry machine.

TABLE 2.—REGULATORY ALTERNATIVES FOR AREA SOURCES

Regulatory alternative	Number of affected machines	Emission reduction over baseline, Mg PCE/yr (ton PCE/yr)	Range of cost effectiveness over baseline, $/Mg PCE ($/ton PCE)*	Maximum incremental cost effectiveness, $/Mg PCE ($/ton PCE)	Solid waste impact of control, NG carbon/20 years (ton carbon/20 years)	National wastewater impact of control, MG PCE/yr (ton PCE/yr)	Maximum energy impacts, MW-hr/yr (million Btu/yr)
I	13,600	18,900 (20,800)	2–1,400 (2–1,300)		100 (110)	0.41–7.35 (0.45–8.10)	13,147 (45,000)
II	13,600	19,900 (21,900)	2–1,500 (2–1,400)	[b] 8,100 (7,300)	700 (800)	4.56–11.5 (5.03–12.7)	6,637 (22,700)
III	16,100	20,500 (22,600)	2–19,600 (2–17,800)	[c] 19,600 (17,800)	1,050 (1,200)	6.66–13.6 (7.34–15.0)	[d] 5,762 (19,700)

* Cost effectiveness is for commercial sector.
[b] Highest incremental cost effectiveness is for a 15.9-kg (35-lb) uncontrolled transfer machine. Under Regulatory Alternative I, an uncontrolled transfer machine would be required to install a refrigerated condenser, whereas under Regulatory Alternative II an uncontrolled transfer machine would be required to install a carbon adsorber.
[c] Highest incremental cost effectiveness is for a 15.9-kg (35-lb) refrigerated-condenser controlled transfer machine going from 85 to 95 percent control. Under Regulatory Alternative II, a refrigerated-condenser controlled transfer machine would be in compliance, whereas under Regulatory Alternative III a refrigerated-condenser controlled transfer machine would be required to remove the refrigerated condenser and install a carbon adsorber.
[d] National energy requirement is lowest of the three alternatives because the calculations include a reduction in electricity demands resulting from 2,500 refrigerated-condenser controlled transfer machines switching to carbon adsorber controls.

Solid waste impacts of this alternative would be 100 Mg (110 ton) carbon every 20 years due to use of carbon adsorbers. The national wastewater impacts would range from 0.41 to 7.35 Mg (0.45 to 8.10 ton) PCE per year. The high end of this range would occur if all uncontrolled dry-to-dry machines install carbon adsorbers. The maximum energy requirements of this alternative would be 13,147 megawatt-hour (MW-hr) per year (45,000 Btu/yr).

Under Regulatory Alternative II, the 13,600 affected machines are expected to achieve an emission reduction over baseline of 19,900 Mg (21,900 ton) PCE/yr at an overall average cost effectiveness of $1,200/Mg ($1,060/ton) PCE removed. The cost effectiveness ranges from $2/Mg to $1,800/Mg ($2/ton to $1,600/ton), where the highest cost effectiveness would be incurred by an uncontrolled 15.9-kg (35-lb) transfer machine. The maximum incremental cost effectiveness between Regulatory Alternatives I and II would be for 2–35 lb transfer machine and is projected to be $8,100/mg ($7,300/tons). Solid waste impacts of this alternative would be 700 Mg (800 ton) carbon every 20 years due to the use of carbon adsorbers. The national wastewater impacts would range from 4.56 to 11.5 Mg (5.03 to 12.7 ton) PCE per year. The high end of this range would occur if all uncontrolled dry-to-dry machines install carbon adsorbers. The maximum energy requirements would be 6,637 MW-hr/yr (22,700 million Btu/year).

Under Regulatory Alternative III, the 16,100 affected machines are expected to achieve an emission reduction over baseline of 20,500 Mg (22,600 ton) PCE/yr at an overall average cost effectiveness of $3,300/Mg ($2,980/ton) PCE removed. The cost effectiveness ranges from $2/Mg to $16,800/Mg ($2/ton to $15,200/ton), where the highest cost effectiveness would be incurred by a 15.9-kg (35-lb) transfer machine removing an existing refrigerated condenser and installing a new carbon adsorber. The maximum incremental cost effectiveness between Regulatory Alternatives II and III would be for 15.9 kg (35 lb) transfer machine and is projected to be $19,600/mg ($17,800/ton). Solid waste impacts of this alternative would be 1,050 Mg (1,200 ton) carbon every 20 years due to the use of carbon adsorbers. The national wastewater impacts would range from 6.66 to 13.6 Mg (7.34 to 15.0 ton) PCE per year. The high end of this range would occur if all uncontrolled dry-to-dry and transfer machines install carbon adsorbers. The maximum energy requirements of this alternative would be 5,762 MW-hr/yr (19,700 million Btu/yr).

Regulatory Alternative II is being selected for this proposed standard for the following reasons. Regulatory Alternative II would achieve a high level of emission reduction, while there is not a significant difference in reductions between Regulatory Alternatives II and III. In addition, the average cost-effectiveness for uncontrolled dry-to-dry and transfer machines is $1,060 per ton of PCE removed—an average cost which EPA considers reasonable. EPA notes, however, that the maximum incremental cost-effectiveness between alternatives I and II is $7,300 per ton of PCE, due to the incremental cost for uncontrolled 35 Mg transfer machines to adopt carbon absorbers versus refrigerated condensers. In light of these considerations, EPA invites specific comment on promulgating alternative I for uncontrolled transfer machines or certain size classes of such existing machines. EPA prefers Alternative II to Alternative III because existing refrigerated condenser-controlled machines would continue to use their current controls, thereby avoiding a high cost-effectiveness of up to $15,200 associated with removing the refrigerated condenser-controlled machines and installing a carbon adsorber. This high cost for these area sources was not considered reasonable in light of the small amount of additional emission reduction that would be achieved by requiring Regulatory Alternative III instead of Regulatory Alternative II. Finally, EPA believes that the wastewater, solid waste and energy impacts associated with Alternative II are not significant.

Although dollars per ton of HAP removed are used to compare alternatives for this source category, this is only one way to consider costs. The determination of what is reasonable dollars per ton of HAP removed for dry cleaning source categories may not necessarily be appropriate for other industrial source categories.

Impacts on the Smallest Sources Within the Source Category

The EPA regulatory guidelines require that special consideration be given to the impacts of all proposed regulations affecting small businesses. Dry cleaning firms are classified as small based on annual sales receipts. A large portion of all dry cleaning facilities are family-owned businesses and many of them are small operations without a large amount of capital available. Consequently, the economic analysis showed that any of the regulatory alternatives adopted could possibly cause as many as 1,250 plant closures and an estimated 5,480 firms may have problems obtaining the financing to purchase the control equipment.

The EPA has the authority to distinguish among sizes, types, and classes of sources in establishing standards under Section 112. The EPA's analysis suggests that for certain types of area sources in the commercial area source category, there is no generally available control technology that should be required when costs of achieving the emission reduction and economic impacts are considered. This class of sources includes those that have gross annual receipts less than $100,000 per year. This includes that portion of the low income sector of the commercial area source category that may experience undue hardship when implementing the level of PCE emission control required by the standard. Undue hardship would be defined as severe economic impact such as the inability to afford the required control device or, at worst, plant closure.

In arriving at the $100,000 threshold, EPA evaluated three low income ranges (according to 1987 census data; Docket No. A–88–11, Item No. II–I–10) to assess the impact of the standard on owners or operators of commercial dry cleaning facilities grossing: less than $25,000; from $25,000 to $50,000; and from $50,000 to $100,000.

The analysis revealed that for dry cleaning owners grossing less than $25,000 annually, the standards may result in no greater than 420 closures and, at most, 2,300 firms may have problems obtaining financing to purchase the control equipment.

For dry cleaning owners grossing $50,000 a year or less, facility closures are estimated at no greater than 180 and an estimated 1,030 firms may have problems obtaining financing to purchase the control equipment.

No more than 670 firms may have problems obtaining financing to purchase control equipment at the $100,000 annual gross revenue level. The economic analysis also projects a 0.2 percent reduction in production. This is the equivalent of no greater than 30 small facilities if the net change in production is attained by closure of small facilities rather than a more general reduction in capacity utilization. Emission reduction achieved by area sources above the $100,000 level would be 8,300 Mg (9,000 ton) PCE per year. The average cost effectiveness over baseline of this cutoff would be $900/Mg ($800/ton), with net annualized costs ranging from $8/Mg to $3,100/Mg ($7/ton to $2,800/ton), depending on the size and type of machine.

For dry cleaning owners grossing $250,000 a year (corresponding to a PCE consumption level of 1,970 1/yr [520 gal/yr] for a dry-to-dry machine or 2,800 1/yr [740 gal/yr] for a transfer machine) or greater, an estimated 270 firms may have problems obtaining financing to purchase control equipment. No firm closures are expected at this level. Although EPA believes it is reasonable to require dry cleaning facilities grossing $100,000 a year (corresponding to a PCE

consumption level of 830 l/yr [220 gal/yr] for a dry-to-dry machine or 1,000 l/yr [300 gal/yr] for a transfer machine) or more to achieve compliance with the standard, the Administrator welcomes comments on this higher exemption level.

For economic reasons, it has been determined that no control will be required for the class of commercial area sources grossing $100,000 annually or less. The EPA believes that the above estimates of no greater than 670 firms that may have problems obtaining financing and, at most, 30 facility closures are likely to be overestimates for several reasons. First, the firm's financial condition was assumed to be independent of size, and the smallest quarter of all dry cleaning firms was assumed to be in below average financial condition. Second, the analysis did not include the possibility of obtaining financing from nontraditional means, such as receiving aid from vendors (see Docket No. A–88–11, Item No. II–B–41), utilizing personal assets, or obtaining loans from relatives. Finally, the analysis did not take into consideration the 3 years that the smallest facility owners have to come into compliance with the regulation, which means they have 3 years to obtain the financing. All of these factors make the above estimates likely to be overestimates.

The decision not to require control for this class of sources would not significantly affect the national emissions reduction achievable with Regulatory Alternative II. The difference in emission reduction would be 1,400 Mg/yr (1,500 tpy). In addition, the average cost effectiveness of $900/Mg ($800/ton) of PCE reduced is reasonable. If a lower income level is adopted, the number of potential closures and the increase in the number of firms that may have problems obtaining financing becomes increasingly significant. As discussed previously, not requiring control of this class of sources significantly reduces any potential adverse impact on the smallest businesses, while at the same time achieving the goal of the CAA requirements in reducing HAP emissions from dry cleaning facilities.

As discussed previously, for purposes of the regulation, the $100,000 gross income level was correlated to annual PCE consumption on a per machine basis. This income level corresponds to an annual consumption level of less than 830 l/yr (220 gal/yr) for dry-to-dry machines and less than 1,000 l/yr (300 gal/yr) for transfer machines.

Control Device Operation and Maintenance

As required by Section 112(h) of the 1990 CAA Amendments, "in the event the Administrator promulgates a design or equipment standard * * * the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment." In view of this, operating specifications are also given in the proposed standards. For a refrigerated condenser, these operating specifications include maintaining the temperature at the outlet side of the refrigerated condenser at less than or equal to 4.4 °C (40 °F). For a carbon adsorber, these operating specifications include desorbing the activated carbon bed using a minimum steam pressure of 170 kiloPascals (kPa) (1.7 atmospheres [atm]) for each 3 kg (7 lb) of articles cleaned per 1 kg (2 lb) of activated carbon.

When using a carbon adsorber to achieve compliance with the standards, it must be desorbed periodically, no less frequently than each time the dry-to-dry machine cleans 3 kg (7 lb) of articles per 1 kg (2 lb) of activated carbon. If the carbon adsorber is not desorbed, the carbon bed will become saturated with PCE and will no longer be able to remove PCE during the dry cleaning process.

To ensure that adequate desorption of the carbon bed occurs, a minimum steam pressure of 170 kPa (1.7 atm) must be used. It is also necessary to maintain sufficient air flow from the dry cleaning machine to the carbon adsorber to ensure that the PCE is being routed through and collected by the carbon adsorber. The air flow through the carbon adsorber must be at least equal to the unrestricted exhaust rate of the dry cleaner and no less than 0.3 cubic meters per second (m^3/sec) [0.01 cubic foot per second (ft^3/sec)]. No bypass to the atmosphere through additional piping or vents is allowed between the dry cleaning machine and the carbon adsorber during desorption.

When using a refrigerated condenser to achieve compliance with the standards, the temperature of the exhaust gases at the outlet side of the refrigerated condenser must be maintained at 4.4 °C (40 °F) or less to ensure that the PCE vapors are condensed sufficiently to achieve 95 percent overall removal of solvents. Above this temperature, the refrigerated condenser would be operating at a reduced efficiency. To ensure compliance, the standards require installation of an inexpensive thermometer (available for about $35) on the outlet side of the refrigerated condenser to measure the temperature of the PCE vapors. To ensure that no PCE vapors are escaping during the dry cleaning process, the dry cleaning machine must be closed to the atmosphere at all times except when articles are being loaded or unloaded.

Leaks and Fugitives

Two principal types of control options for fugitives and leaks were evaluated for reducing PCE emissions from dry cleaning machines: good housekeeping (or pollution prevention) practices and replacement of transfer machines with dry-to-dry machines.

In evaluating pollution prevention practices, the control of liquid leaks from places such as valves or pumps, or fugitive leaks from places such as hose connections, gaskets, or seatings, depends on finding the leaks and repairing them. Visual inspections or use of a portable halogenated-hydrocarbon detector to find leaks can be performed daily, weekly, monthly, or at other intervals. Daily inspections were judged too burdensome for the many small facility owners or operators. Weekly inspections could be made during days of lower consumer demand without affecting production. Longer intervals would not allow for timely discovery of leaks. Therefore, weekly inspections are required by the standards.

After leaks are found, repairs are required. Emissions from leaks can be reduced by minimizing the length of time before repair. In some cases, required parts may not be on hand to immediately repair the leak. Therefore, if no repair parts are needed, the proposed rule requires immediate repair after detecting a leak. The proposed rule allows 3 working days for a purchase order to be initiated if repair parts are necessary.

Fugitive emissions result from the transfer and handling of clothes from the washer to the dryer. Replacement of transfer machines to eliminate these emissions was considered. This option would require replacement of all transfer machines with dry-to-dry machines. However, this option was discounted for several reasons: First, transfer machines are being replaced with dry-to-dry machines in the absence of an air emissions regulation, due mainly to the recent promulgation of more stringent OSHA worker exposure regulations. Further, vendor information indicates that no new transfer machines have been sold since the late 1980's, and that trend is expected to continue. For these reasons, replacement of transfer

machines was not considered further as an option for reducing fugitive emissions.

Waste Materials

The proposed standards would specify work practice standards for reducing the amount of PCE contained in waste material generated at a dry cleaning facility. This waste material may include residue from regenerable filters, cartridge filters, and solvent stills.

Cartridge filters are usually drained in their housings or other sealed containers before disposal. The proposed standard would require a minimum of 24 hours of drain time. This time is based on manufacturers' recommendations and current industry practice. Normally, draining would occur over a weekend with the filters being replaced on the following Monday morning. Therefore, no loss of production time would occur. Another option would have required cartridge filters to be dried in housings vented to carbon adsorbers. This option was not chosen because the amount of PCE recovered by the carbon adsorber would be too low to make this option economically worthwhile.

F. Equivalent Systems of Emission Reduction

This proposed rule does not preclude the use of other emission control equipment or procedures of operation that can be demonstrated to be equivalent, in terms of reducing PCE emissions, to those prescribed in the proposed regulation. For determination of equivalency, any person may submit test data and request the Administrator's approval of alternative equipment. The submittal must describe the equipment, test procedures, date and location of the test, and test results. Upon request, the Administrator will also review proposed test procedures for technical feasibility.

Equivalency for transfer or dry-to-dry machine exhaust control equipment can be demonstrated by any person including users or manufacturers of equipment. In order to determine equivalency, the Administrator must find a substantial likelihood that the control technology used in normal operations would achieve equivalent emission reductions as those required by the standards at approximately the same or less energy or environmental impacts.

To permit the use of alternative systems for carbon adsorption or refrigerated condensation, the Administrator must find that the control device reduces transfer or dry-to-dry machine emissions by a minimum of 95 percent, averaged over the drying cycle. After evaluation, the Administrator makes a preliminary determination of whether the application is approved and publishes a notice of these findings in the **Federal Register**. After notice and opportunity for a public hearing, the Administrator publishes the final determination in the **Federal Register**.

Equivalency provisions have been included in the proposed standard.

G. Modification and Reconstruction Considerations

Under section 112(a) of the CAA, a new source is defined as a stationary source, the construction or reconstruction of which is commenced after the proposal date of the standard. An existing source is defined as any stationary source other than a new source. The EPA is in the process of developing procedures for ensuring that the modification provisions of section 112(g) of the CAA are reflected in the source's operating permit obtained under title V of the CAA.

In section 112(g) of the CAA, a modification is defined as:

> A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous.

As defined in § 63.2 of the proposed General Provisions for 40 CFR part 63, reconstruction means the replacement of components of an existing source to such an extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable, entirely new, source; and (2) it is technologically and economically feasible for the reconstructed source to meet the relevant emission standard(s), alternative emission limitation(s), or equivalent emission limitation(s) established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Some changes can be made at these facilities that may be deemed reconstructions under 40 CFR 63.5. For example, replacement of either the washer or dryer of a transfer machine system would be considered a reconstruction.

Concerning reconstruction, the owner or operator of an existing dry cleaning facility must apply for approval of any reconstruction according to the application procedures specified in § 63.5 of the proposed General Provisions for 40 CFR part 63 to be published in the **Federal Register** in the near future.

H. Selection of Monitoring Requirements and Emission Test Methods

The principal monitoring technique that can be used for dry cleaners is inspection for leaks. Inspection by the owner or operator for leaks is routine maintenance necessary for the most efficient operation of the dry cleaner. It is assumed that most dry cleaning establishments will already follow these procedures. However, to ensure that all dry cleaning establishments follow these procedures, methods for leak detection are specified in the proposed standard. Leak detection can be performed by visual inspection or by using an instrument such as a portable halogenated-hydrocarbon detector. Both liquid and vapor leaks would be required to be repaired immediately if no repair parts are needed. If repair parts are needed, a purchase order for those parts would need to be initiated within 3 working days; otherwise, a copy of a purchase order showing required parts to be on order must be available. This procedure would minimize PCE losses from perceptible leaks by limiting the time for such leaks to be repaired.

For determining compliance with a liquid leak standard, any liquid leak large enough to drip or run would be considered "perceptible" and would have to be repaired. This inspection would be visual.

Other perceptible vapor leaks are more difficult to quantify, but would consist of vapor leaks that are obvious from the odor of PCE in the general area or by observation of gas flow by feel, application of bubble solution, use of a portable electronic halogenated-hydrocarbon detector ot similar means. An electronic halogenated-hydrocarbon detector is an inexpensive means (about $200) of determining compliance for vapor leaks. When using an electronic leak detector, the instrument can be adjusted while standing at the call counter (or outside of the plant) so that they are just barely giving off an infrequent ticking sound. When searching for leaks, higher vapor levels will cause a very fast ticking, while a serious leak will usually produce a continuous squealing sound. The halogenated-hydrocarbon detector could be used as a quantitative measure to

locate the exact source that needs repair.

To ensure that the refrigerated condenser is being operated properly, the owner or operator is required to maintained a temperature of 4.4 °C (40 °F) on the outlet side of the refrigerated condenser as measured by a thermometer. A thermometer is an inexpensive means (about $35) of determining compliance with this temperature requirement.

No other monitoring requirements are included for control devices or leaks because sufficiently accurate continuous emission monitors are not available for dry cleaning facilities.

No compliance test methods would be required for carbon absorbers or refrigerated condensers because, as stated previously, these would be too costly for dry cleaning facilities to perform.

I. Selection of Recordkeeping and Reporting Requirements

Concerning recordkeeping and reporting requirements, no reports to the Administrator would be required for sources to document performance of the carbon adsorber or refrigerated condenser for several reasons. First, when either a carbon adsorber or a refrigerated condenser is installed on a dry-to-dry machine or transfer machine, it is to the economic advantage of the owner or operator to make sure it is operating efficiently. When operated efficiently, cost savings can be achieved due to reduced solvent consumption. Second, the dry cleaning industry is comprised primarily of small businesses for which the recordkeeping and reporting requirements are being kept to a minimum.

Each owner or operator, however, would be required to keep a record of the amount of solvent consumed each year. This information would be used to determine whether or not the dry cleaning facility would qualify for the solvent consumption cutoff and to determine if the dry cleaning facility is a major or area source. According to industry representatives, this information is already maintained in the form of solvent purchase records kept routinely by the facility owner, so it would not be burdensome to require.

In addition, the owner or operator would also be required to keep a record of the results of the weekly inspections for leaks, the dates of repair, or date the purchase order for repair parts was submitted. This information would be used to ensure that leaks are detected and repaired in a timely manner. The record of weekly inspections must be posted in an area that is accessible or visible to workers at the facility and to enforcement officials. Recordkeeping associated with leak detection and repair is probably already being maintained on a routine basis at many dry cleaning facilities; however, any additional burden associated with this recordkeeping would not be significant.

In addition, for those owners or operators using a carbon adsorber to achieve compliance with the standard, it would be necessary to record the periods and frequency of time when desorption is performed. This information would be used to ensure that the carbon bed is not saturated with PCE and that it is operating effectively. The record of desorption times must be posted in an area that is near the carbon adsorber and that is accessible or visible to workers at the facility and to enforcement officials. Initial notification reports as specified by § 63.9 of the General Provisions would also be required. These include name and address of the facility as well as design capacity of the machine, the type of emission control device being used and its efficiency. The General Provisions for 40 CFR part 63 will be proposed in the **Federal Register** in the near future.

All records of weekly inspections and solvent purchases must be kept for 5 years.

J. Operating Permit Program

Under new Title V of the CAA, all HAP-emitting sources will be required to obtain an operating permit. Oftentimes, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the proposed rule for the operating permit program published on May 10, 1991 (56 FR 21712), this new permit program would include in a single document all of the requirements that pertain to a single source. Once a State's permit program has been approved, each dry cleaning facility within that State must apply for and obtain an operating permit. Because there are thousands of small dry cleaning facilities nationwide, general permit guidance, such as a standard form to fill in, will be made available for these sources. If the State wherein the dry cleaning facility is located does not have an approved permitting program, the owner or operator of a dry cleaning facility must submit the application under the proposed General Provisions of 40 CFR part 63. The addresses for the Regional Offices and States are included in the proposed General Provisions referenced in the previous section.

K. Solicitation of Comments

Compliance Times for Existing Sources

The EPA welcomes comments on the proposed time period in which existing sources must achieve compliance with the proposed standards. The CAA allows up to 3 years for an existing source to achieve compliance (see (section 112(i)(3)). After careful consideration, EPA is proposing an 18-month time period from the date of promulgation of this proposed rule in which existing dry cleaning machines with a design capacity of greater than 22.7 kg (50 lb) must achieve compliance with the standards. Existing dry cleaning machines with a design capacity of 22.7 kg (50 lb) or less must achieve compliance within 36 months.

This 18-month period for existing machines with a design capacity of 22.7 kg (50 lb) or larger was selected based on claims by manufacturers of control equipment that they have sufficient production capacity to meet the increased demand for carbon adsorbers and refrigerated condensers within 1 year following promulgation. Based on this projection, EPA believes that 18 months would be a reasonable amount of time for these owners or operators of dry cleaning machines to achieve compliance.

The Administrator realizes, however, that several hundred sources would require control devices in order to achieve compliance. Even though these devices are generally off-the-shelf items that would not need to meet site-specific design criteria, the Administrator believes that additional time should be allowed for the smallest dry cleaning business owners (using machines 22.7 kg (50 lb) or smaller) to obtain the capital to purchase control equipment to comply with the standard. Therefore, 36 months is allowed for compliance for these sources.

As noted in section VI and in Table 2 of the Preamble, the maximum incremental cost-effectiveness for a 35-lb transfer machine under Regulatory Alternative II is $8,100/mg ($7,300/ton) PCE removed. This is based on the use of a carbon adsorber compared to the use of a refrigerated condenser under Regulatory Alternative I. The EPA requests comment on whether consideration in the final regulation should be given to allow owners or operators of uncontrolled transfer machines on certain size classes of such machines to install either refrigerated condensers or carbon adsorbers to control PCE emissions.

Consideration of an Alternative Exemption Level

The EPA also welcomes comments on an alternative PCE consumption exemption level of 1,970 1/yr (520 gal/yr) for a dry-to-dry machine or 2,800 1/yr (740 gal/yr) for a transfer machine (corresponding to annual gross receipts of $250,000). After careful consideration, EPA is proposing a PCE exemption level of 830 1/yr (220 gal/yr) for a dry-to-dry machine or 1,100 1/yr (300 gal/yr) for a transfer machine. Below this level, dry cleaning facilities would be exempt from the standards. These exemption levels correspond to a $100,000 annual gross receipt level and were selected based on findings from the economic analysis. The EPA believes that it is reasonable to require dry cleaning facilities consuming these PCE levels or greater to install a control device in accordance with the standard. However, the Administrator welcomes comments on the higher exemption levels.

Justification for Regulating Area Sources

As discussed under section VI.A of this preamble, in the absence of a strategy to reduce HAP's from area sources under section 112(k), EPA requests comments on the appropriate threshold for determining whether particular area source categories or subcategories present a threat of adverse effects to human health or the environment sufficient to warrant regulation.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the CAA Amendments of 1990. Persons wishing to make oral presentation on the proposed standard for dry cleaners should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble, and should refer to Docket No. A–88–11.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the CAA).

C. Executive Order 12291

Under Executive Order (E.O.) 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis (RIA). The criterion set forth in Section 1 of the Order for determining whether a regulation is a major rule are as follows: (1) Is likely to have an annual effect on the economy of $100 million or more; (2) is likely to cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation is not "major" because it would result in none of the adverse effects mentioned above. The total annual cost is estimated to be less than $9 million a year, far below the $100 million criterion set forth in the Order. The price impacts are estimated to range from 0 to 0.37 percent. The economic analysis of the proposed regulation's impact on the industry indicated that output adjustments are no greater than a 0.2 percent decrease. These small market adjustments indicate that no significant adverse effects on competition, employment, investment, productivity, innovation, or international trade are expected. Therefore, this regulation is not subject to an RIA.

This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any written EPA response to those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1415.01) and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, EPA, 401 M St. SW. (PM–223), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 83 hours per respondent for the first year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The cost for this additional burden per respondent is estimated to be about $658 the first year. Because most of these are not recurring requirements, the burden will decrease significantly in subsequent years.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Firms in the dry cleaning industry are classified as small or large based on annual sales receipts (Code of Federal Regulations, 1991). Commercial firms are classified as small if they earn less than $2.5 million per year. By this definition, over 99 percent of commercial dry cleaning firms are small (U.S. Department of Commerce, 1990b).

The economic impacts of regulatory alternatives with and without various classes of sources based on

consumption of perchloroethylene (PCE) but described in terms of dry cleaning revenues were analyzed.

For the commercial area source category, the economic analysis did indicate that many firms within the class of sources with annual gross receipts less than $100,000 would be affected significantly by the proposed standard. Below this annual receipt level are found the very smallest family-operated businesses with low annual hazardous air pollutant (HAP) consumption and few employees. Due to economic considerations, no control is required for this class of sources under generally available control technologies (GACT).

For the class of sources with annual receipts of $100,000 or greater, the economic impacts are much smaller. Less than 30 net closures due to the proposed regulation are projected. The analysis indicates that firms in below-average financial condition may face difficulty in obtaining the required funds to purchase control equipment from traditional loan sources such as banks. The analysis projects between 0 and 670 firms will be in this category. These firms will either obtain other financing (vendor-aided, relatives, personal assets, etc.) or either close or sell their firm.

Thus, regulatory options were developed that greatly mitigated the impact on small entities. Pursuant to the provisions of 5 U.S.C 605(b), an initial regulatory flexibility analysis has been prepared for the commercial source category (Docket No. A–88–11, see Item No. II–B–45).

F. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed regulation, including health, economic, technological, or other aspects.

This regulation will be reviewed 9 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 15, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed to add 40 CFR part 63 consisting at this time of subpart M to read as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

Subparts A through L [Reserved]

Subpart M—National Perchloroethylene Emission Standards for Dry Cleaning Facilities

Sec.

63.320 Applicability.
63.321 Definitions.
63.322 Standards.
63.323 Equivalent equipment and procedures.
63.324 Test methods and procedures.
63.325 Reporting and recordkeeping requirements.
63.326 Delegation of authority.

Authority: 7401, 7412, 7414, 7416, and 7601.

Subparts A through L [Reserved]

Subpart M—National Perchloroethylene Emission Standards for Dry Cleaning Facilities

§ 63.320 Applicability.

(a) The provisions of this subpart apply to dry cleaning dryers, dry-to-dry machines, transfer machine systems, filters, muck cookers, and stills at dry cleaning facilities that use perchloroethylene as a solvent.

(b) Each existing dry-to-dry machine that consumes 830 liters per year (220 gallons per year) or less of perchloroethylene shall be exempt from this subpart, except for the provisions of § 63.325 (a)(1) and (d).

(c) Each existing transfer machine system that consumes 1,100 liters per year (300 gallons per year) or less of perchloroethylene shall be exempt from this subpart, except for the provisions of § 63.325 (a)(1) and (d).

(d) The owner or operator of each existing transfer machine using a refrigerated condenser shall comply with the provisions of § 63.322 (b)(1) and (c) of this subpart unless those transfer machines' potential to emit is limited to less than 10 tons per year. Such a limit would be: the consumption of less than 7,600 liters per year (2,000 gallons per year) of perchloroethylene by any size transfer machine. Any size transfer machine, considering controls, shall be considered a major source unless its potential to emit is limited by the amount of perchloroethylene used, or some similar design or operational restriction. For a 45.4-kilogram (100-pound) dry-to-dry machine, such a limit on the machine's potential to emit would be the consumption of less than 11,700 liters per year (3,100 gallons per year) of perchloroethylene or a similar design or operational restriction.

(e) The provisions of Subpart A of this part [1] apply to owners or operators of stationary sources affected by this subpart.

§ 63.321 Definitions.

Terms used in this subpart are defined in the Clean Air Act Amendments of 1990, in subpart A of this part, or in this section as follows:

Area Source means, for purposes of this subpart, a dry-to-dry machine consuming less than 11,700 liters per year (3,100 gallons per year) perchloroethylene or a transfer machine consuming less than 7,600 liters per year (2,000 gallons per year) perchloroethylene.

Carbon adsorber means a bed of activated carbon into which perchloroethylene vapors are introduced and trapped for subsequent desorption.

Cartridge filter means a discreet solvent filter unit designed to be replaced periodically.

Coin-operated, plant-operated dry cleaning machine means a perchloroethylene dry cleaning machine activated by an attendant. Such dry cleaning machines are typically located at a laundromat that also provides coin-operated water washer and dryer facilities.

Coin-operated, self-service dry cleaning machine means a perchloroethylene dry cleaning machine activated by the customer. Such dry cleaning machines are typically coin-operated.

Desorption means regeneration of an activated carbon bed by removal of the adsorbed solvent, usually with steam.

Dryer means a machine used to remove perchloroethylene from articles of clothing or other textile or leather goods, after washing and extraction of excess perchloroethylene.

Dry cleaning system means a transfer machine or dry-to-dry machine and its ancillary equipment including filters, muck cookers, stills, interconnecting piping and ducts, and solvent tanks which must be present in order to complete the dry cleaning process.

[1] EPA will propose Subpart A in the future.

Dry-to-dry machine means a perchloroethylene dry cleaning machine in which washing, extraction, and drying are all performed in the same single unit.

Muck cooker means a device for heating regenerable filter material to drive off perchloroethylene vapors for reclaiming.

Perceptible leaks means any perchloroethylene vapor or liquid leaks that are obvious from:

(1) The odor of the perchloroethylene;

(2) The observation of gas flow by feel, by application of bubble solution, or by use of a hand-held halogenated-hydrocarbon detector; or

(3) Visual observation, such as pools or droplets of liquid.

Refrigerated condenser means a closed-loop vapor recovery system into which perchloroethylene vapors are introduced and trapped by cooling below the dew point of the perchloroethylene.

Regenerable filter material means the residue from a filter using loose diatomaceous earth.

Solvent tank means any container that is used to store perchloroethylene prior to use in the dry cleaning process.

Still residue means the mixture of perchloroethylene, oils, and other material that must be periodically removed from a solvent still.

Stills are defined as devices used to volatilize and recover perchloroethylene from contaminated solvent removed from the cleaned articles.

Transfer machine system means a combination perchloroethylene dry cleaning machine in which washing and extraction are performed in one unit and drying is performed in a separate unit. The articles of clothing or other textiles or leather goods are transferred manually from the washer to the dryer.

Washer means a machine used to clean articles of clothing or other textile or leather goods by washing and extracting with perchloroethylene.

Wet waste material means the undiluted filter material from a regenerable filter or the undiluted residue from a solvent still.

§ 63.322 Standards.

(a) Each owner or operator of an existing, new, or reconstructed dry-to-dry machine, subject to the provisions of this subpart, shall vent the entire exhaust through a carbon adsorber, refrigerated condenser, or equally effective control device or circulate the entire exhaust through such a control device for a ventless machine.

(b) Each owner or operator of a transfer machine subject to the provisions of this subpart shall meet one of the following requirements:

(1) The entire exhaust from a new, reconstructed, or uncontrolled transfer machine shall be vented through a carbon adsorber, or equally effective control device; or

(2) The entire exhaust from an existing, refrigerated-condenser controlled area source transfer machine shall be vented through a refrigerated condenser or equally effective control device.

(c) A carbon adsorber used to achieve compliance with paragraph (a) or (b)(1) of this section shall be designed and operated to meet the following requirements:

(1) Desorption shall be performed periodically, and no less frequently than each time the machine cleans 3 kilograms of articles per kilogram of activated carbon, based on dry-to-dry machine rated capacity;

(2) Desorption shall be performed with a minimum steam pressure of 170 kilopascals;

(3) A rated air flow capacity shall be achieved at least equal to the unrestricted exhaust rate of the dry cleaning machine and a minimum air flow capacity shall be maintained at 0.3 cubic meters per second;

(4) No bypass to the atmosphere shall be permitted during desorption.

(d) A refrigerated condenser used to achieve compliance with paragraph (a) or (b)(2) of this section shall be designed and operated to meet the following requirement:

(1) No exhaust gases shall be vented to the atmosphere or circulated through a ventless machine until the air-vapor stream temperature on the outlet side of the refrigerated condenser is less than or equal to 4.4 °C (40 °F). For the purpose of measuring the temperature of the perchloroethylene vapors, a thermometer shall be installed on the outlet side of the refrigerated condenser system for both vented and no-vent machines.

(e) Each owner or operator who commences construction or reconstruction of a new source after (date of publication of Final rule) shall achieve compliance upon startup. Each owner or operator of an existing dry-to-dry or transfer machine with a design capacity larger than 22.7 kilograms (50 pounds) shall achieve compliance within 18 months of (date of publication of Final rule). Each owner or operator of an existing dry-to-dry or transfer machine with a design capacity that is 22.7 kilograms (50 pounds) or smaller shall achieve compliance within 36 months of (date of publication of Final rule).

(f) No owner or operator of cartridge filters subject to the provisions of this subpart shall dispose of used cartridge filters unless the cartridge filters have been drained in their housing, or other sealed container, for a minimum of 24 hours, or have been dried in an enclosure vented to the control device.

(g) The following components shall be inspected weekly for leaks visually or using a portable halogenated-hydrocarbon detector:

(1) Hose connections, unions, couplings, and valves;

(2) Machine door gaskets and seatings;

(3) Filter head gasket and seating;

(4) Pumps;

(5) Solvent base tanks and solvent and waste storage containers;

(6) Water separators;

(7) Filter sludge recovery;

(8) Distillation units;

(9) Divertor valves;

(10) Saturated lint from the lint basket; and

(11) Cartridge filters.

(h) The owner or operator of a source subject to the provisions of this subpart shall repair perceptible vapor or liquid perchloroethylene leaks immediately after detecting such a leak. If repair parts are necessary, a purchase order for those parts shall be initiated within 3 working days of detecting such a leak. Such repair parts shall be installed within a reasonable period of time after receipt.

(i) The owner or operator of a source subject to the provisions of this subpart shall store all perchloroethylene and wastes that contain perchloroethylene in tightly sealed containers, which are impervious to the solvent and chemical reaction of the perchloroethylene.

(j) The owner or operator of a source subject to the provisions of this subpart shall minimize the time that the door of the dry cleaning machine remains open.

(k) The owner or operator of a source subject to the provisions of this subpart shall clean lint traps frequently and place this perchloroethylene-laden lint in a tightly sealed container as described in § 63.322(i).

(l) For purposes of § 63.9(b)(2)(vi), a major source is a dry-to-dry machine consuming 11,700 liters per year (3,100 gallons per year) perchloroethylene or greater, or a transfer machine consuming 7,600 liters per year (2,000 gallons per year) perchloroethylene or greater. An area source is a dry-to-dry machine consuming less than 11,700 liters per year (3,100 gallons per year) perchloroethylene or a transfer machine consuming less than 7,600 liters per year (2,000 gallons per year) perchloroethylene.

§ 63.323 Equivalent equipment and procedures.

(a) Upon written application from any person, the Administrator may approve the use of equipment or procedures that have been demonstrated to his satisfaction to be equivalent in terms of reducing perchloroethylene emissions to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart. The application shall contain a complete description of the testing procedure and the date, time, and location of the test, and a description of the test results.

(b) For the purpose of determining equivalency of control equipment required by § 63.322(a) or § 63.322(b)(1), the Administrator will evaluate the application to determine the adequate demonstration of 95 percent control of perchloroethylene emissions from a dry-to-dry machine or an uncontrolled transfer machine.

(c) For the purpose of determining equivalency of control equipment required by § 63.322(b)(2), the Administrator will evaluate the application to determine the adequate demonstration of 85 percent control of perchloroethylene emissions from a refrigerated-condenser controlled transfer machine.

(d) The Administrator will make a preliminary determination of whether the application for equivalence is approvable and will publish a notice of these findings in the Federal Register. After notice and opportunity for public hearing, the Administrator will publish the final determination in the Federal Register.

§ 63.324 Test methods and procedures.

Each owner or operator of a dry cleaning facility subject to the provisions of this subpart shall make at least a weekly inspection of the facility either visually or using a portable halogenated-hydrocarbon detector to determine compliance with § 63.322(g) and § 63.322(h).

§ 63.325 Recordkeeping and reporting requirements.

(a) Each owner or operator subject to the provisions of this subpart shall keep and maintain for a period of 5 years records of the following:

(1) The amount of perchloroethylene consumed per year.

(2) The results of weekly inspections, conducted under § 63.324(a), and records of the dates of repair or purchase orders for repair parts to demonstrate compliance with § 63.322(h). The record or log of weekly inspections must be posted in an area that is accessible or visible to workers in the plant and to enforcement officials.

(3) The frequency and period of desorption to show compliance with § 63.322(c)(1).

(b) Each owner or operator of a dry cleaning facility subject to the requirements of this subpart shall comply with the initial report requirements in § 63.9(b) of Subpart A of this part.

(c) Each owner or operator of a dry cleaning facility subject to the requirements of this subpart shall submit an initial statement of compliance to show that the provisions of § 63.322(e) are being met. The statement shall list the type of control device used to achieve initial compliance with § 63.322 and other appropriate information as described under the provisions of § 63.9(h). The statement of compliance status shall be sent by registered letter on the 30th day following the compliance dates given in § 63.322(c) in the case of existing sources, or simultaneously with the initial notification required under paragraph (b) of this section in the case of new or reconstructed sources.

(d) Each owner or operator demonstrating compliance with § 63.320 (b) or (c) shall perform the following:

(1) Submit to the Administrator an initial report stating that the existing source is consuming no more than 830 liters per year (220 gallons per year) of perchloroethylene if it is a dry-to-dry machine and no more than 1,100 liters per year (300 gallons per year) of perchloroethylene if it is a transfer machine and is, therefore, exempt from the requirements of § 63.322(a) or § 63.322(b).

(2) If during any year the existing source consumes more than 830 liters per year (200 gallons per year) perchloroethylene for a dry-to-dry machine or 1,100 liters per year (300 gallons per year) perchloroethylene for a transfer machine, then the source owner or operator shall comply with the requirements of § 63.322(a) or § 63.322(b) within 90 days. A compliance report shall be submitted to the Administrator within 90 days.

(e) Each owner or operator of an existing transfer machine using a refrigerated condenser that consumes 7,600 liters per year (2,000 gallons per year) of perchloroethylene or greater shall submit to the Administrator a report stating that the source is in compliance with the provisions of § 63.322(b)(1) of this subpart. The statement of compliance shall be sent by registered letter on the 30th day following compliance.

(f) For purposes of this subpart, if any of the information required by this subpart is required to be submitted to another agency or State, then the dry cleaning owner or operator may submit a copy of this information.

§ 63.326 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under Section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 63.323 Equivalent equipment and procedures.

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federal register

Monday
December 9, 1991

Part VI

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

1992–1993 Subsistence Taking of Fish and Wildlife Regulations for Federal Public Lands in Alaska; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

1992-1993 Subsistence Taking of Fish and Wildlife Regulations for Federal Public Lands in Alaska

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Temporary Subsistence Management Regulations for Public Lands in Alaska (36 CFR part 242, and, 50 CFR part 100), implementing the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. The rulemaking will promulgate regulations regarding seasons and bag limits, and methods and means related to subsistence taking of fish and wildlife contained in subpart D, for the 1992–1993 season. The rulemaking is necessary because subpart D is subject to an annual review cycle.

DATES: Written public comments, in the form of proposals for change, will be accepted regarding this proposed rulemaking until January 23, 1992. Proposals for changes to subpart D will then be compiled and made available for review on or about the beginning of February 1992. The public may then have 14 days to submit written comments on said compiled proposals. An opportunity for oral comment on the proposals will be provided at a Federal Subsistence Board (Board) meeting to be held in March 1992. At that meeting the Board will take action on proposed changes to the 1991–1992 version of subpart D.

ADDRESSES: Written comments, in the form of proposals for change, may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. The availability of compiled proposals and location of the noted Board meeting will be announced in published notices throughout the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest lands, contact Norman Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21623, Juneau, Alaska 99102–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires the Secretary of the Interior and the Secretary of Agriculture (Secretaries) to implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on Federal public lands unless the State of Alaska enacts and implements laws of general applicability consistent with ANILCA's requirements for the definition, preference and participation as specified in sections 803, 804, and 805. The State implemented such a program which the Department of the Interior previously found to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture (Departments) were required to assume responsibility for the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). This program is administered by a Federal Subsistence Board made up of a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. These five agencies within the Federal Government are responsible for management of Federal public lands covered by title VIII of ANILCA. All agencies participated in the development of these regulations. All Board members have reviewed this proposed rule and concur in its publication for public review and comment. Because these regulations relate to lands managed by Federal agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

On June 26, 1991, "1991–1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska" were published in the **Federal Register** (56 FR 29310). That rulemaking amended subpart D of 36 CFR part 242 and 50 CFR part 100.

Proposed Changes From 1991–1992 Seasons and Bag Limits

The season and bag limit portions of the 1991–1992 subpart D, with minor corrections and adjustments to seasons and harvest area descriptions, serves as the proposed text for subpart D season and bag limit regulations for 1992–1993. Those corrections and modifications include:

- New preamble.
- GMU 1 Goat—Federal registration permit area added.
- GMU 8 Deer—dates and antlerless deer bag limit corrected.
- GMU 9E Moose—early season extended 5 days.
- GMU 17B (remainder) Moose—early season extended 5 days.
- GMU 20E (Ladue, Sixty-mile and Forty-mile River drainages) Moose—season extended 5 days.
- GMU 22A Moose—late season extended 30 days.
- GMU 25B (Porcupine drainage) Moose—early season extended 5 days.
- GMU 25B (remainder) Moose—late season extended 5 days.
- GMU 25C Caribou—early and late seasons established.
- GMU 25D (West)—Federal registration permit added.

Based upon work related to the Draft Environmental Impact Statement (EIS) on "Subsistence Management for Federal Public Lands in Alaska," other provisions of subpart D, including regulations regarding methods and means, have been altered slightly in this proposed rulemaking. Those alterations are responsive to comments received from subsistence users as a part of the EIS scoping meetings and analysis of related comments in late 1990. The alterations are aimed at allowing adequate harvest opportunities and simplifying the subsistence regulations through elimination of verbiage unrelated to customary and traditional subsistence taking of fish and wildlife.

Eliminated from the body of the currently proposed subpart D text are references within § _____.23(1) to "Eligibility determination[s]." Those determinations were restatements of

customary and traditional use determinations adopted in subpart B of the Temporary Subsistence Management Regulation (55 FR 27125). These determinations were adopted from subsistence regulations of the State of Alaska pending review and issuance of Federal customary and traditional use determinations by the Board. The federally adopted State determinations were included in the 1991–1992 publication of subpart D in an attempt to create a more readable, user friendly package of regulations. Public comment regarding those federally adopted State determinations was not required by the April 1991 **Federal Register** publication, nor accepted by the Board in its review of the subpart D regulations. The regulatory process to be used by the Board to determine, as necessary, customary and traditional uses of fish and wildlife by rural communities on Federal public lands will be developed by July 1, 1992.

It should be noted that the section numbering detailed in this proposed rulemaking may change when the Federal subsistence programmatic regulations (subparts A, B, and C of 36 CFR part 242 and 50 CFR part 100) are promulgated by July 1, 1992. For purposes of this rulemaking, however, all references to these proposed regulations should cite the section numbering contained herein.

Navigable Waters

The United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of Federal public lands for purposes of these regulations (see 56 FR 29312 dated June 26, 1991). At this time, Federal Subsistence Fishing Regulations apply to: (1) Non-navigable waters on Federal public lands, except in Glacier Bay National Park where all waters are closed to subsistence harvest, and (2) navigable waters in those cases where Federal title and/or jurisdiction is specifically identified herein. The areas identified in this proposed rule do not necessarily constitute a complete listing of waters within Federal jurisdiction. Nothing in these regulations is intended to enlarge or diminish the Federal authority to manage submerged lands other than those listed in those instances in which the title is held by the United States.

The Department of the Interior is currently conducting a comprehensive review of title and jurisdictional issues relating generally to navigable waters. The conclusions and decisions resulting from that review will be incorporated into the regulations governing subsistence taking of fish and wildlife on Federal public lands as appropriate.

Public Comments/Proposals and Hearings

It is the policy of the Department of the Interior and the Department of Agriculture, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments or proposals regarding the 1991–1992 version of Subpart D to the address noted at the beginning of this rulemaking. The Board will hold a public hearing on this proposed rulemaking and related proposals in March 1992.

Proposals for change to specific portions of subpart D must not exceed two pages, and they must include, at a minimum, the following information:

a. Name, address and telephone number of individual or organization submitting the proposal

b. A statement of the problem

c. The proposed solution to the problem

d. Section and/or paragraph of the regulations associated with the proposal

e. Suggested wording for the addition or change

f. Any supporting information

Incomplete proposals not containing the above information may not be considered.

Standardized forms for submission of proposals are available on request from U.S. Fish and Wildlife Service at the previously noted address.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A programmatic EIS discussing Federal subsistence management is being prepared, the draft EIS was released October 7, 1991. A final EIS will be issued prior to implementation of the final "1992–1993 Subsistence Taking of Fish and Wildlife Regulations for Public Lands in Alaska."

ANILCA Section 810 Compliance

The intent of all Federal Subsistence Regulations is to best accommodate customary and traditional subsistence uses subject to the limitation of protecting healthy, or natural and healthy fish and wildlife populations. The 810 analysis will be completed as part of the final EIS process prior to promulgation of final regulations.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 *et seq.* They apply to subsistence users of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed if the councils and committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number

of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of Federal public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain Federal public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

The primary authors of this regulation are Peggy Fox and Richard S. Pospahala, Subsistence Office, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, and John W. Hiscock, Subsistence Division, Alaska Regional Office, U.S. National Park Service, Anchorage, Alaska.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska fish, National Forests, public lands, reporting and record keeping requirements, wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, fish, public lands, reporting and record keeping requirements, wildlife.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of the Code of Federal Regulations are proposed to be amended in an identical fashion in 36 CFR part 242 and 50 CFR part 100 as follows:

PART _____—[AMENDED]

1. The authority citation for 50 CFR part 100 and 36 CFR part 242 continues to read as follows:

Authority: 16 U.S.C. 472,551,668dd *et seq.*, 3101 *et seq.*; 18 U.S.C. 7, 3559, 3571; 43 U.S.C. 1733.

2. In 36 CFR part 242 and 50 CFR part 100 subpart D—Subsistence Taking of Fish and Wildlife is revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

Sec.

_____.23 Subsistence taking of wildlife.
_____.24 Subsistence taking of fish.
_____.25 Subsistence taking of shellfish.

§ _____.23—Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this subpart:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Bag limit means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.

Big game means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.

Bow means long bow, recurve bow, or compound bow, but not crossbow.

Broadhead means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eights inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Bull moose means any male moose.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Dire emergency means a situation in which a person:

(1) Is in a remote area;

(2) Is involuntarily experiencing an absence of food required for sustenance;

(3) Will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and

(4) Cannot expect to obtain alternative food sources in time to avoid the consequences described in paragraph (3) of this definition.

Full curl horn means the horn of a male Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

Fur animal means coyote, arctic fox, red fox, lynx, or red squirrel; "fur animals" is a classification of animals subject to taking with a hunting license.

Fur bearer means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, marmot, wolf or wolverine; "fur bearers" is a classification of animals subject to taking with a trapping license.

Highway means the drivable surface of any constructed road.

Household means that group of people domiciled in the same residence.

Hunting area for a species means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic or poisonous upon contact or ingestion.

Registration permit means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received, and are issued:

(1) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(2) Based on priorities as determined by _____.17 (Determining priorities among subsistence users.)

Sealing means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a Dall sheep, the tip of which has grown through seven-eighths of a circle (315 degrees), described by the

outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide and pelt are all the same thing, and mean any tanned or untanned external covering of an animal's body; skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

Small game means all species of grouse, hares, rabbits, ptarmigan, waterfowl, cranes and Wilson or jacksnipe.

Tine or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured one inch or more from the tip.

Transport means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

Unclassifed game means all species of game not otherwise classified in the definitions.

Unit means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting regulations and the Game Management Unit Map of Alaska.

Wildlife means any bird, big game, small game, fur bearer, fur animal, or unclassified game and includes any part, product, egg, or offspring thereof, or dead body or part thereof.

(b) Small game and unclassified game, fur animals, fur bearers, and big game may be taken for subsistence by any method, unless prohibited below or by other Federal statute. (1) The following methods of taking wildlife are prohibited:

(i) By shooting from, on, or across a highway;

(ii) With the use of any poison;

(iii) The subsistence taking of wildlife using a helicopter in any manner, including transportation of individuals, equipment or wildlife; this paragraph does not apply to transportation of an individual, gear or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized vehicle except in the following situations; from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased; from a motor-driven boat or snow machine to take caribou in Game Manager..ent Unit 23; or where otherwise provided in this subpart;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) With the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) With the aid of a pit, fire, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) With a snare, except for taking unclassified game, fur bearer, grouse, hare, or ptarmigan;

(ix) By intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping fur bearers or hunting black bears.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in paragraph (b)(1) of this section:

(i) With the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) In Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) The use of a muzzle loading rifle is prohibited for brown bear, black bear, moose, bison, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) With a crossbow in any area restricted to hunting by bow and arrow only;

(iii) With a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead of at least 7/8" width, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed;

(iv) With the use of bait; except that black bears may be taken with the use of bait between April 15 and May 31, in Units 14 (A)(B) and in Units 1 (A)(B)(D), 2, 3, 5, 6, 7 (except Resurrection Creek and its tributaries), 11, 13 and 16 (except Denali State Park) 15 and 17 between April 15 and June 15; and Units 12, 19–21, 24, and 25, between April 15 and June 30. Baiting of black bears is subject to the following restrictions:

(A) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) A hunter using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(E) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(G) No person may have more than two bait stations established (bait present) at any one time;

(H) No person may establish a black bear bait station unless he or she first registers the site with AFD&G;

(v) With the use of a trap or snare;

(vi) While a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(vii) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Park System unit until 3:00 a.m. following the day in which the flying occurred.

(viii) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take or assist in taking for subsistence purposes on other Federal public lands a big game animal until after 3:00 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of deer, or to subsistence taking of wolves during August 10–March 31 in the portions of Units 9, 11, 12, 13 except 13(E) west of the Parks Highway, 17, 19, 20, 21, 24, 25(B), 25(C), and 25(D); additionally with respect to wolves: shotguns may not be used to take wolves;

(ix) From a boat in Units 1–5 except for persons certified as disabled.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in paragraph (b)(1) of this section:

(i) By using a trap, snare, net, or fish trap;

(ii) By disturbing or destroying a den;

(iii) By having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking fur bearers for subsistence under a trapping license are prohibited,

in addition to the prohibitions in paragraph (b)(1) of this section;

(i) By disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) By disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) Taking land otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same game management unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) Taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) Having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) Taking a red fox in Unit 15 by any means other than a steel trap or snare.

(c) Possession and Transportation of Wildlife:

(1) Unless otherwise provided, no person may take a species of wildlife in any unit or portion of a unit if that person's total statewide take of that species under Federal and State regulations already equals or exceeds the bag limit for that species in that unit or portion of a unit except as specified in paragraph (c)(3) of this section.

(2) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State season for the same species are not separate and distinct.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) A bear taken in a unit having a bag limit of one bear per year does not count against a one bear every four regulatory years bag limit in other units; however, an individual may not take more than one bear in a regulatory year.

(5) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(6) Any person who gives or receives wildlife shall furnish upon request of a Federal agent a signed statement describing the following: names and addresses of persons who gave and received wildlife, when and where the wildlife was taken, and what wildlife was transferred.

(7) No person may possess, transport, or give, receive or barter wildlife that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder

(8) Evidence of sex and identity. (i) No person may possess or transport a Dall sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(ii) If the taking of a big game animal, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(iv) Until the hide has been sealed by a representative of ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify ADF&G or agency identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) As used in paragraph (e), *bear* means brown bears in all units, and black bears of all color phases taken in Units 1–7, 11–16, and 20;

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State law.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(f) Sealing of Marten, Lynx, Beaver, Otter, Wolf, and Wolverine. No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1–5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State law.

(g) Utilization of Wildlife. (1) The following definitions shall apply to this paragraph:

Wild fowl means species of wild bird for which seasons or bag limits have been established by State or Federal law.

Edible meat means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast: However, *edible meat* of big game or wild fowl does not include: meat of the head; meat that has been damaged and made inedible by the method of taking, bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) No person may use wildlife as food for a dog or fur bearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a fur bearer or fur animal;

(iii) Red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;

(iv) Legally taken unclassified game.

(3) A person taking game for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(ii) The hide and edible meat of a brown bear;

(iii) The hide and edible meat of a black bear.

(4) A person who takes a big game animal or a species of wild fowl may not intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(5) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions, or unavoidable loss in the field to another wild animal.

(6) If a person is convicted of violating paragraph (g) of this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (hock), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than $2,500.

(7) It is unlawful for a person to possess the horns or antlers of a big game animal that was taken after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption or legally transferred.

(h) Taking wildlife in defense of life & property. (1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if:

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) All other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide including claws and surrender it to the State immediately. All bear hides surrendered (brown or black) must include claws. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking.

(3) As used in this section, "property" is limited to:

(i) A dwelling, permanent or temporary.

(ii) An aircraft, boat, automobile, or other means of conveyance;

(iii) A domesticated animal.

(iv) Other property of substantial value necessary for the livelihood or survival of the owner. Game taken by hunters is not "property" in the sense of this regulation.

(i) Subsistence taking and use of migratory birds, including waterfowl, will conform to the provisions of the Migratory Bird Treaty Act, as amended, and its implementing regulations.

(j) Subsistence taking and use of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(k) Subsistence taking and use of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(l) There may be additional requirements for eligibility to hunt in National Parks. Contact your local National Park Service office for details.

(m) Rural or non-rural residents and sport hunters not specifically prohibited by Federal regulations from hunting on Federal public lands in an area, may hunt there in accordance with the appropriate State regulations.

(n) Game Management Units and Specific Regulations. (1) GMU 1. Game Management Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Camano Point and all islands in Stephens Passage and Lynn Canal north of Taku Inlet;

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal and excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw, including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock, including Berner's Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, and excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) Public lands within Glacier Bay National Park are closed to all subsistence take.

(B) Unit 1(A). (*1*) In the Ketchikan area, a strip one-fourth mile wide on each side of the Tongass Highway system, including the Ward, Connel, and Harriet Hunt Lake Roads, is closed to the taking of big game;

(*2*) In the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bears;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bears;

(D) Unit 1(C). (*1*) In the Juneau area, that area between the coast and a line one-fourth mile inland of the following road systems is closed to the taking of big game: Glacier Highway from Mile 0 to Mile 24 at Peterson Creek, Douglas Highway from the Douglas city limits to Milepost 7 on the North Douglas Highway, Mendenhall Loop Road, and Thane Road;

(*2*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*3*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(4) Mt. Juneau drainage, bounded by the Glacier Highway, Salmon Creek and its reservoir, a line from the head of the Salmon Creek drainage to the head of Granite Creek, and down Granite Creek and Gold Creek to the Glacier Highway, is closed to the taking of mountain goat;

(E) Unit 1(D)—a strip one-fourth mile wide on each side of the Lutak Road between Mile 7 and Chilkoot Lake, and from the Chilkoot River bridge to the end of the Lutak Road spur at the head of Lutak Inlet, is closed to the taking of big game;

(vi) The following areas are closed to the trapping of furbearers for subsistence as indicated:

(A) Glacier Bay National Park;

(B) Unit 1(C) (Juneau area):

(1) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(2) Auke Lake and the area within one-quarter mile of Auke Lake;

(3) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(4) A strip within one-quarter mile of the Douglas Island coast along the entire length of the Douglas Highway and a strip within one-quarter mile of the Eaglecrest Road;

(5) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(6) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail; Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and the Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear:	
Unit 1—2 bears, not more than one of which may be a blue or glacier bear.	Sept. 1 to June 30.
Brown Bear:	
Unit 1—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31 Mar. 15 to May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug 1 to Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1 to Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15-Dec. 31.	Aug. 1 to Dec. 31.
Unit 1(D)	No open season.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion between North of the Bradfield Canal and the North fork of the Bradfield River 1 goat by State registration permit only; that portion between LeConte Bay and the north fork of Bradfield River/canal will require a Federal Registration permit for the taking of a second goat; however, the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1 to Dec. 31.
Remainder of Unit 1(A) and Unit 1(B)—2 goats by State registration permit only.	Aug. 1 to Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1 to Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State regisuration permit only.	Aug. 1 to Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.	No open season.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines Highway—1 goat by State registration permit only.	Sept. 15 to Nov. 30.
Remainder of Unit 1(D)—1 goat by State regisuration permit only.	Aug. 1 to Dec. 31.
Moose:	
Unit 1(A) and 1(B) south of LeConte Glacier—1 bull.	Sept. 15 to Oct. 15.
Remainder of Unit 1(C)—1 bull by State registration permit only.	Sept. 15 to Oct. 15.
Unit 1(D)	No open season.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver	
Trapping—Unit 1(A), (B), (C)—No limit.	Dec. 1 to May 15.
Unit 1(D)	No open season.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr 30.
Trapping—No limit	Dec. 1 to Feb. 15
Fox, Red (including Cross, Black, and Silver Phases):	
Hunting—2 Foxes	Nov 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Hares (Snowshoe and Arctic):	
Hunting—5 per day	Sept. 1 to Apr. 30.
Lynx:	
Hunting—2 Lynx	Dec. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Marten:	
Trapping—No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
Trapping—No limit	Dec. 1 to Feb. 15.
Muskrat:	
Trapping—No limit	Dec. 1 to Feb. 15.
Otter (land only):	
Trapping—No limit	Dec. 1 to Feb. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	Nov. 10 to Apr. 30.
Wolverine:	
Hunting—1 Wolverine	Nov 10 to Feb. 15.
Trapping—No limit	Nov 10 to Apr 30.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17 March 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 1 to May 15.

(2) GMU 2 (i) Game Management Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island;

Note:—There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear	
Unit 2—2 bears, not more than one of which may be a blue or glacier bear	Sept. 1 to June 30.
Deer	
Unit 2—4 antlered deer	Aug. 1 to Dec. 31

Bag limits	Open season
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—No limit	Dec. 1 to May 15.
Coyote:	
Hunging—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Hares (Snowshoe and Arctic):	
Hunting—5 per day	Sept. 1 to Apr. 30.
Lynx:	
Hunting—2 Lynx	Dec. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Marten:	
Trapping—No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
Trapping—No limit	Dec. 1 to Feb. 15.
Muskrat:	
Trapping—No limit	Dec. 1 to Feb. 15.
Otter (land only):	
Trapping—No limit	Dec. 1 to Feb. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	Nov. 10 to Apr. 30.
Wolverine:	
Hunting—1 Wolverine	Nov. 10 to Feb. 15.
Trapping—No limit	Nov. 10 to Apr. 30.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17. March 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 1 to May 15.

(3) GMU 3. (i) Game Management Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait, including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) A strip one-fourth mile wide on each side of the Stikine (Zimovia) Highway from the Wrangell city limits to Milepost 9 is closed to the taking of big game;

(B) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to the Crystal Lake campground is closed to the taking of big game, except wolves;

(C) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(D) Blind Slough, draining into Wrangell Narrows, and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear:	
Unit 3—2 bears, not more than one of which may be a blue or glacier bear	Sept. 1 to June 30.
Deer:	
Unit 3—that portion south of Sumner Strait and Decision Passage, including the Vank Island group, but not including Level, Conclusion, and Channel Islands—2 antlered deer.	Aug. 1 to Nov. 30.
Unit 3—that portion of Mitkof Island, south of city limits of Petersburg only; Woewodski and Butterworth Islands—one antlered deer by State registration permit only.	Oct. 15 to Oct. 31.
Remainder of Unit 3	No open season.
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 bull with spike-fork or 50-inch antler.	Oct. 1 to Oct. 15.
Unit 3—Remainder	No open season.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 3—Mitkof Island—No limit.	Dec. 1 to Apr. 15.
Trapping—Unit 3 (except Mitkof Island)—No limit.	Dec. 1 to May 15.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr 30.
Trapping—No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Hares (Snowshoe and Arctic):	
Hunting—5 per day	Sept. 1 to Apr 30.
Lynx:	
Hunting—2 Lynx	Dec. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Marten:	
Trapping—No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
Trapping—No limit	Dec. 1 to Feb. 15.
Muskrat:	
Trapping—No limit	Dec. 1 to Feb. 15.
Otter (land only):	
Trapping—No limit	Dec. 1 to Feb. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	Nov. 10 to Apr. 30.
Wolverine:	
Hunting—1 Wolverine	Nov. 10 to Feb. 15.
Trapping—No limit	Nov. 10 to Apr. 30.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17. Mar. 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 1 to May 15.

(4) GMU 4. (i) Game Management Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3, including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) In the Sitka area, a strip one-fourth mile wide on each side of all State highways is closed to the taking of big game;

(B) The Seymour Canal Closed Area (Admiralty Island), including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay, and including Swan and Windfall Islands, is closed to the taking of bears;

(C) The Salt Lake Bay Closed Area (Admiralty Island), including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(D) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(E) Northeast Chichagof Controlled Use Area, consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Port Frederick, is closed to the use of any motorized land vehicle for brown bear hunting or for the taking of marten, mink, or weasel;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136°21' W. long.), to Rodgers Point (57°35' N. lat., 135°33' W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57°34' N. lat., 135°25' W. long.), to the entrance of Gut Bay (56°44' N. lat., 134°38' W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15 to May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 20.
Deer:	
Unit 4—6 deer; however, antlerless deer may be taken only from Sept. 15 to Jan. 31.	Aug. 1 to Jan. 31.
Goat:	
1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 4 (that portion east of Chatham Strait)—No limit.	Dec. 1 to May 15.
Unit 4 (that portion west of Chatham Strait).	No open season.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Hares (Snowshoe and Arctic):	
Hunting—5 per day	Sept. 1 to Apr. 30.
Lynx:	
Hunting—2 Lynx	Dec. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Marten:	
Trapping—No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
Trapping—No limit	Dec. 1 to Feb. 15.
Muskrat:	
Trapping—No limit	Dec. 1 to Feb. 15.
Otter (land only):	
Trapping—No limit	Dec. 1 to Feb. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	Nov. 10 to Apr. 30.
Wolverine:	
Hunting—1 Wolverine	Nov. 10 to Feb. 15.
Trapping—No limit	Nov. 10 to Apr. 30.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17. Mar. 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 1 to May 15.

(5) GMU 5. (i) Game Management Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to subsistence hunting and trapping.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.
—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 5—2 bears, not more than 1 of which may be a blue or glacier bear.	Sept. 1 to June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1 to May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1 to Nov. 30.
Unit 5—Remainder	No open season.
Goat:	
1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Moose:	
Unit 5(A), except Nunatak Bench—1 bull by State registration permit only. The season will be closed when 60 bulls have been taken from the unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 15-21 Federal public lands will be closed to moose hunting, except for Residents of Yakutat.	Oct. 15 to Nov. 15.
Unit 5(A)—Nunatak Bench	No open season.
Unit 5(B)—1 bull by State registration permit only.	Sept. 1 to Nov. 15.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—No limit	Nov. 10 to May 15.
Coyote:	
Hunting 2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Hares (Snowshoe and Arctic):	
Hunting—5 per day	Sept. 1 to Apr. 30.
Lynx:	
Hunting—2 Lynx	Dec. 1 to Feb. 15.
Trapping—No limit	Dec. 1 to Feb. 15.
Marten:	
Trapping—No limit	Nov. 10 to Feb. 15.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Feb. 15.
Muskrat:	
Trapping—No limit	Dec. 1 to Feb. 15.
Otter (land only):	
Trapping—No limit	Nov. 10 to Feb. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	Nov. 10 to Apr. 30.
Wolverine:	
Hunting—1 Wolverine	Nov. 10 to Feb. 15.
Trapping—No limit	Nov. 10 to Apr. 30.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17. Mar. 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 1 to May 15.

(6) GMU 6. Game Management Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield, including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and

excluding the Nellie Juan and Kings River drainages;

(i) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla, including Kanak, Wingham, and Kayak Islands;

(ii) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(iii) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(iv) Unit 6(D) consists of the remainder of Unit 6;

(v) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6 bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 6(A)—1 bear	Sept. 1 to June 30.
Unit 6(B), (C)—1 bear	Sept. 1 to June 30.
Unit 6(D)—1 bear	Sept. 1 to June 30.
Brown Bear	No open season.
Deer:	
Unit 6—4 deer; however, antlerless deer may be taken only from Nov. 1-Dec. 31.	Aug. 1 to Dec. 31.
Moose:	No open season.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only.	Aug. 20 to Jan. 31.
GMU 6(D) (subareas 822, 823, 824, 828, 879 only)—1 goat by Federal registration permit only. The taking of goats on Federal public land in GMU 6(D), subareas 823 and 824, is closed except to rural residents of GMU 6(C) and 6(D). The season in Subareas 829 and 830 may be opened by emergency order. The season will be closed when harvest limits are reached.	Aug. 20 to Jan. 31.
Unit 6(C) and remainder of Unit 6(D).	No open season.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—20 per season	Feb. 1 to Mar. 31.
Coyote:	
Unit 6(A), (D)—Hunting—2 Coyotes.	Sept. 1 to Apr. 30.
Unit 6(A)—Trapping—No limit.	Nov. 10 to Mar. 31.
Unit 6(B)—Hunting—No limit.	July 1 to June 30.
Unit 6(B)—Trapping—No limit.	Nov. 10 to Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—Hunting—No limit.	July 1 to June 30.
Trapping—No limit	Nov. 10 to Apr. 30.
Unit 6(C)—Remainder—Hunting—No limit.	July 1 to June 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1. to Feb. 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Dec. 15 to Jan. 15.
Trapping—No limit	Dec. 15 to Jan. 15.
Marten:	
Trapping—No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar. 31.
Squirrel (Red, Ground, Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—2 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17. Mar. 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 1 to May 15.

(7) GMU 7. (i) Game Management Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield, including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, migratory birds and small game may be hunted with shotguns after September 1;

(B) The Exit Glacier Closed Area in Unit 7, which consists of the south side drainages of the Resurrection River downstream from the mouth of Redman Creek, and Resurrection Bay drainages between the mouth of the Resurrection River and the mouth of Lowell Creek, is closed to the taking of big game; Kenai Fjords National Park is closed to all subsistence uses;

(C) The Cooper Landing Closed Area, which consists of that portion of Units 7 and 15 bounded by a line from the junction of the Sterling Highway and the Chugach National Forest boundary, then along the national forest boundary to Thurman Creek, then southeasterly along Thurman Creek and the northeast side of Trout Lake, then to the confluence of Juneau Creek and Falls Creek, then easterly along Falls Creek and the North Fork of Falls Creek and over the connecting saddle to Devils Creek, then southeasterly along Devils Creek to its confluence with Quartz Creek, then southwesterly along Quartz Creek to the Sterling Highway and then to the point of beginning, is closed to the taking of Dall sheep and mountain goat;

(D) The Resurrection Creek Closed Area, which consists of the drainage of Resurrection Creek downstream from and including the drainage of Rimrock and Highlands Creeks, (and including

Palmer Creek), is closed to the taking of moose;

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—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear:	
Unit 7—3 bears	July 1 to June 30.
Brown Bear	No open season.
Caribou	No open season.
Moose	No open season.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—20 per season	Feb. 1 to Mar. 31.
Coyote:	
Hunting—No limit	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—1 Fox	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Marten:	
Trapping—No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to May 15.
Otter (land only):	
Trapping—No limit	Nov. 10 to Feb. 28.
Squirrel (Red, Ground, Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—1 Wolf	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Feb. 28.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17 and Mar. 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 10 to Mar. 31.

(8) GMU 8. (i) Game Management Unit 8 consists of all islands southeast of the centerline of Shelikof Strait, including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands;

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—Those residents listed under eligibility are the qualified subsistence users.
—"No open season" means no Federal subsistence season.
—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Caribou:	
No limit	July 1 to June 30.
Deer:	
Unit 8, that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52' N. lat., 152° 58' W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1 to Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south western-most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31.	Aug. 1 to Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1 to Dec. 31.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—30 Beaver per season.	Nov. 10 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 10 to Mar. 31.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Marten:	
Trapping—No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Jan. 31.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17 and Mar. 1 to Apr. 15.
Ptarmigan (Rock, Willow and White):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.

(9) GMU 9. Game Management Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east to False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage, drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands;

(i) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(ii) Unit 9(B) consists of the Kvichak River drainage;

(iii) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(iv) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(v) Unit 9(E) consists of the remainder of Unit 9;

(vi) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) In Unit 9 in the McNeil River State Game Sanctuary, the McNeil River drainage, Mikfik Creek drainage, and all drainages into McNeil Cove from Akjemguiga Cove to McNeil Head, are closed to hunting, and the remainder of the McNeil River State Game Sanctuary and contiguous tidelands are closed to brown bear hunting; access to the sanctuary is by permit only issued by the State of Alaska;

(B) That portion of Unit 9 extending south and east of McNeil River State Game Sanctuary to the boundary of Katmai National Park and Preserve, and including any State land within the boundaries of Katmai National Park and Preserve, is closed to brown bear hunting;

(vii) The following areas are closed to the trapping of furbearers for subsistence as indicated: The drainages

of McNeil River, Mikfik Creek and all other drainages into McNeil Cove which extends from Akjemguiga Cove on the north to McNeil Head on the south, located at the head of Kamishak Bay, in the lower Cook Inlet are closed to trapping; access to the McNeil River State Game Sanctuary is by permit only;

(viii) Katmai National Park is closed to all subsistence uses;

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—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 9—3 bears	July 1 to June 30.
Brown Bear:	
Unit 9(B)—1 bear every four regulatory years.	Oct 1 to Oct. 21 (odd years only) May 10 to May 25 (even years only).
Unit 9 (E)—1 bear (Federal registration permit is required May 10 to May 25 (odd years only) and Oct. 7 to Oct. 21 (even years only).	Oct. 7 to Oct. 21. May 10 to May 25.
Remainder of Unit 9	No open season.
Caribou:	
Units 9(A), (B) and (C)— 4 caribou; however, no more than 2 caribou may be taken Aug. 10 to Aug. 31 and no more than 1 caribou may be taken Sept. 1 to Nov 30.	Aug. 10 to Mar. 31
Unit 9(E)—4 caribou; however no more than 2 caribou may be taken Aug. 10 to Nov. 30. A Federal registration permit is required Sept. 1 to Nov. 30.	Aug. 10 to Mar 31.
Unit 9(D)—1 bull (Federal public lands are closed to the hunting of caribou except by rural Alaska residents of Unit 9(D) and False Pass.	Aug. 10 to Sept. 30. Dec. 1 to Mar. 31
Sheep:	
Unit 9—1 ram with 7/8 curl horn.	Aug. 10 to Sept. 20.
Moose:	
Unit 9(A)—1 bull	Sept. 1 to Sept. 15.
Unit 9(B)—1 bull	Sept. 1 to Sept. 15. Dec. 1 to Dec 31
Unit 9(C)—that portion draining into the Naknek River—1 moose; however, antlerless moose may be taken only from Dec. 1 to Dec. 31; A State registration permit is required for the December hunt.	Sept. 1 to Sept. 15. Dec. 1 to Dec. 31
Unit 9(C)—Remainder—1 moose; however, antlerless moose may be taken only from Dec. 1 to Dec. 31.	Sept. 1 to Sept. 15. Dec. 1 to Dec. 31
Unit 9(D)	No open season.
Unit 9(E)—1 bull	Sept. 1 to Sept. 20. Dec. 1 to Dec. 31
Bat, Shrew, rat, mouse and porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—40 Beaver per season.	Jan. 1 to Mar 31
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr 30.
Trapping—No limit	Nov. 10 to Mar. 31
Fox, Arctic (Blue and White):	
Hunting—No limit	Dec. 1 to Mar 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases:	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 10 to Feb. 28.
Trapping—No limit	Nov. 10 to Feb. 28.
Marten:	
Trapping—No limit	Nov. 10 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar 31
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar 31
Trapping—No limit	Nov. 10 to Feb. 28.
Crow:	
Hunting—40 per day	Sept. 1 to Nov. 17 and Mar. 1 to Apr 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Hunting—15 per day, 30 in possession.	Aug. 10 to Apr 30.
Ptarmigan (Rock, Willow and White-tailed):	
Hunting—20 per day, 40 in possession.	Aug. 10 to Apr 30.

(10) GMU 10. Game Management Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(i) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified. Otter Island in the Pribilof Islands is closed to hunting;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

(ii)

Bag limits	Open season
Caribou:	
Unit 10—Unimak Island only—1 bull (Federal public lands are closed to the hunting of caribou except by rural Alaska residents of False Pass.	Aug. 10 to Sept. 30. Dec. 1 to Mar. 31.
Unit 10—Umnak and Adak Islands only.	No open season.
Unit 10—Remainder—No limit.	July 1 to June 30.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb.15.
Trapping—No limit	Nov. 10. to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar. 31.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—2 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Cormorant:	
No limit	July 1 to June 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr 30.

(11) GMU 11. (i) Game Management Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier;

Note: There are private land areas within many Federal public land units. These

regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

(ii)

Bag limits	Open season
Black Bear:	
Unit 11—3 bears	July 1 to June 30.
Caribou:	
Unit 11—1 bull by Federal registration permit only. Up to 30 bulls may be taken in Unit 11 (Source of permits-Wrangell-St. Elias National Park, mile 105.5 Old Richardson Highway, Copper Center; or the Slana District Station, Slana).	Aug. 10 to Sept. 30.
Sheep:	
Unit 11—1 sheep	Aug. 10 to Sept. 20.
Moose:	
Unit 11—1 bull	Sept. 1 to Sept. 20.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—30 Beaver per season.	Nov. 10 to Apr. 30.
Coyote	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phase)	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Dec. 15 to Jan. 15.
Trapping—No limit	Dec. 15 to Jan. 15.
Marten:	
Trapping—No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar. 31.
Squirrel (Red, Ground, Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10 to Mar. 31
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.

(12) GMU 12. (i) Game Management Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

(ii)

Bag limits	Open season
Black Bear:	
Unit 12—3 bears	July 1 to June 30.
Caribou:	
Unit 12—that portion west of the Nebesna River within the drainages of Jack Creek, Platinum Creek and Totschunda Creek—1 bull by Federal registration permit only; up to 50 bulls total may be taken in Units 11 and 12 fall and winter hunts combined (source of permits—Wrangell-St. Elias National Park, 105.5 Old Richardson Highway, Copper Center; or the Slana District Station, Slana).	Aug. 10 to Sept. 30.
Remainder of Unit 12—1 bull.	Sept. 1 to Sept. 20.
1 caribou of either sex may be taken by a Federal registration permit during a winter season to be announced for the residents of Tetlin and Northway only.	To be announced.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickerel Lake to the Canadian border—1 bull.	Sept. 1 to Sept. 15. Nov. 20 to Nov. 30.
Unit 12—that portion lying east of the Nebesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 bull.	Sept. 1 to Sept. 30.
Unit 12—Remainder—1 bull.	Sept. 1 to Sept. 15.
Bat, shrew, rat, mouse and porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—15 Beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
Hunting—2 coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Feb. 28.
Hares: (Snowshoe and Arctic):	
No limit	July 1 to June 30
Lynx:	
Hunting— 2 Lynx	Nov. 1 to Jan. 31
Trapping—No limit	Nov. 1 to Jan 31.
Marten:	
Trapping—No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Feb. 28.
Muskrat:	
Trapping—No limit	Sept. 20 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Oct. 1 to Apr. 30.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 1 to Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.

(13) GMU 13. (i) Game Management Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into

the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River;

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) Delta Controlled Use Area:

(*1*) The area consists of the drainages of the Tanana River south of the Alaska Highway, from the west bank of the Johnson River to and including drainages of the Delta River north of the north bank of Miller Creek and Canwell Glacier in Units 13(B), 20(A), and 20(D);

(*2*) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 through August 25; however, this does not prohibit motorized access to the area for hunting, or transportation of game on the Richardson Highway;

(C) The Paxson Closed Area in Unit 13(B), which consists of the eastern drainage of the Gulkana River lying west of the Richardson Highway and the western drainage of the Gulkana River between the Danali Highway and the north end of Paxon Lake where the Gulkana River enters Paxson Lake, is closed to the taking of big game;

(D) The Sheep Mountain Closed Area which lies along the Glenn Highway in Unit 13(A) and is bounded by a line from Caribou Creek, Milepost 107 Glenn Highway, then easterly along the Glenn Highway to Milepost 123, then north to Squaw Creek, then downstream to Caribou Creek, then down Caribou Creek to the point of beginning, is closed to the taking of mountain goat and Dall sheep;

(E) The Sourdough Controlled Use Area:

(*1*) The area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(*2*) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access or transportation of game on the Richardson Highway, Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Alaska Department of Fish and Game;

(F) The Clearwater Creek Controlled Use Area:

(*1*) The area consists of that portion of Unit 13(B) north of the Denali Highway, west of and including the MacLaren River drainage, east of and including the eastern bank drainages of the Middle Fork of the Susitna River downstream from and including the Susitna Glacier, and the eastern bank drainages of the Susitna River downstream from its confluence with the Middle Fork;

(*2*) The area is closed to the use of any motorized vehicle for hunting; however, this does not prohibit motorized access, or transportation of game, on the Denali Highway;

(G) The Tonsina Controlled Use Area:

(*1*) The area consists of that portion of Unit 13(D) bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River;

(*2*) The area is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 to September 30;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of the private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Mountains, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

Bag limits	Open season
Black Bear:	
Unit 13—3 bears	July 1 to June 30.
Caribou:	
Unit 13—2 caribou by Federal registration permit only. Hunting within the Trans Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10 to Sept. 20. Jan. 5 to Mar. 31.

Bag limits	Open season
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 Ram with 7/8 curl horn.	Aug. 10 to Sept. 20
Goats:	
.....	No open season.
Moose:	
Unit 13—1 bull moose by Federal registration permit only; only 1 permit will be issued per household. Source of permits—Bureau of Land Management, Glennallen District Office, Glennallen AK	Aug. 25 to Sept. 20.
Bat, shrew, rat, mouse and porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—30 Beaver per season.	Nov 10 to Apr. 30.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov 10 to Mar. 31
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov 1 to Feb. 15.
Trapping—No limit	Nov 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Dec. 15 to Jan. 15.
Trapping—No limit	Dec. 15 to Jan. 15.
Marten:	
Trapping—No limit	Nov 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov 10 to Jan. 31
Muskrat:	
Trapping—No limit	Nov 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov 10 to Mar 31.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day 30 in possession.	Aug. 10 to Mar 31.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar 31.

(14) GMU 14. (i) Game Management Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River;

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is open to the taking of big game by permit only;

(B) The Eagle River Management Area, consisting of the Eagle River drainage upstream from the Glenn Highway in Unit 14(C) is closed to hunting, except sheep hunting by permit;

(C) The Anchorage Management Area:

(*1*) The area consists of all Cook Inlet drainages south of the Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek, but excluding the Anchorage Coastal Wildlife Refuge;

(*2*) The Anchorage Management Area is closed to hunting, except that moose hunting is allowed by State of Alaska permit only; and small game and waterfowl may be taken by falconry, except that waterfowl may not be taken in the Ship Creek drainage west of Post Road;

(D) The Eklutna Lake Management Area:

(*1*) The area consists of the drainages of Eklutna River and Eklutna Lake in Unit 14(C) upstream from the Glenn Highway, excluding those drainages flowing into the East Fork of Eklutna River upstream from the bridge above the Lake and Thunderbird Creek;

(*2*) The area is closed to hunting, except that:

(*i*) Small game may be taken by bow and arrow only, from the day after Labor Day through April 30;

(*ii*) Moose hunting is allowed by permit with bow and arrow only;

(*iii*) Black bear may be taken by bow and arrow only, from the day after Labor Day to May 20, for one bear only;

(*iv*) Sheep may be taken by permit, and by bow and arrow only, from the day after Labor Day through September 30;

(E) The Peters Creek Management Area:

(*1*) The area consists of all lands bounded on the south and west by Eagle River and the Fort Richardson Military Reservation, on the east by the old Glen Highway, and on the north by Peters Creek;

(*2*) The area is closed to hunting except that:

(*i*) Small game may be taken by shotgun or bow and arrow only, north and west of the Alaska Railroad;

(*ii*) Moose hunting is allowed by drawing permit, by bow and arrow only;

(*iii*) The following areas in Unit 14(C) (Anchorage Area) are closed to the trapping of furbearers for subsistence as indicated:

(A) The drainages into Eklutna River and Eklutna Lake, excluding those drainages flowing into the East Fork of the Eklutna River, upstream from the bridge above the lake, within the Chugach State Park except Thunderbird Creek;

(B) Eagle River and all drainages into Eagle River;

(C) That portion of Chugach State Park outside of the Eagle River, Anchorage, and Eklutna Management areas is open to trapping under Unit 14(C) seasons and bag limits, except no trapping of wolf, wolverine, land otter, or beaver is allowed;

(D) All land and water within the Anchorage Management Area as described in the preceding Subsection;

(E) In the Anchorage Coastal Wildlife Refuge in Unit 14(C), described in Alaska Statute 16.20.031: all land and water south and west of and adjacent to the toe of the bluff that extends from Point Woronzof southeasterly to Potter Creek;

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—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear:	
Unit 14(A), (C)—1 bear	July 1 to June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years.	Sept. 1 to Oct. 10.
Bat, shrew, rat, mouse and porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 14(A)—30 Beaver per season.	Nov 10 to Apr 30.

Bag limits	Open season
Trapping—Unit 14(C)—That portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, and the Twentymile River—20 per season.	Feb. 1 to Mar 31
Unit 14(C)—Remainder	No Open Season.
Coyote:	
Hunting—Unit 14(A) and (C)—2 Coyotes.	Sept. 1 to Apr 30.
Trapping—Unit 14(A)—No limit.	Nov. 10 to Mar. 31
Trapping—Unit 14(C)—No limit.	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—Unit 14—2 Foxes	Nov. 1 to Feb. 15.
Trapping—Unit 14(A)—No limit.	Nov. 10 to Feb. 28.
Trapping—Unit 14(C)—1 Fox.	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—Unit 14(A)—5 Hares per day.	July 1 to June 30.
Hunting—Unit 14(C)—5 Hares per day.	Day after Labor Day to Apr. 30.
Lynx:	
Hunting—2 Lynx	Dec. 15 to Jan. 15.
Trapping—No limit	Dec. 15 to Jan. 15.
Marten:	
Trapping—No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to May 15.
Otter (land only):	
Trapping—Unit 14(A)—No limit.	Nov. 10 to Mar. 31.
Trapping—Unit 14(C)—No limit.	Nov. 10 to Feb. 28.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—Unit 14(A)—4 Wolves.	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Hunting—Unit 14(C)—1 Wolf.	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Feb. 28.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession.	Aug. 10. to Mar. 31.
Unit 14(C)—5 per day, 10 in possession.	Day after Labor Day to Mar. 31.
Ptarmigan (Rock, Willow and White-tailed):	
Unit 14(A)—10 per day, 20 in possession.	Aug. 10 to Mar. 31
Unit 14(C)—10 per day, 20 in possession.	Day after Labor Day to Mar. 31.

(15) GMU 15. (i) Game Management Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coast line of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary;

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The Kenai Controlled Use Area, consisting of that portion of Unit 15(A) north of the Sterling Highway, is closed during moose-hunting season to the use of aircraft for hunting moose, including transportation of a moose hunter or moose part; however, this does not apply after 12:01 a.m., September 11, and does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area or from a publicly owned airport within the area to points outside of the area;

(B) The Lower Kenai Controlled Use Area, consisting of Unit 15(C), is closed to the use of any motorized vehicle except an aircraft or boat for hunting moose from September 11 through September 20, including transportation of a moose hunter or moose part; however, this does not apply to a motorized vehicle on a State- or Borough-maintained highway;

(C) The Skilak Loop Management Area; consisting of that portion of Unit 15(A) bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning; is closed to hunting and trapping except that small game may be taken only from October 1 through March 1 by bow and arrow only, and antlerless moose may be taken by permit only.

(iii) The following areas are closed to the trapping of furbearers for subsistence as indicated:

(A) Within the city limits of Homer (Unit 15) as those limits existed in November 1987;

(B) The Skilak Loop Wildlife Management Area;

(C) That portion of Unit 15(B) east of the Kenai River Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

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—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

(iv) Eligibility Determination.

Bag limits	Open season
Black Bear:	
Unit 15—3 bears	July 1 to June 30.
Bat, shrew, rat, mouse and porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—20 Beaver per season.	Feb. 1 to Mar. 31.
Coyote:	
Hunting—No limit	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phase):	
Trapping—1 Fox	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Marten:	
Trapping—Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier.	No open season.
Unit 15—Remainder—No limit.	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to May 15.
Otter (land only):	
Trapping—Unit 15(A), (B)—No limit.	Nov. 10 to Jan. 31.
Trapping—Unit 15(C)—No limit.	Nov. 10 to Feb. 28.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—1 Wolf	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Feb. 28.
Wolverine:	
Hunting—Unit 15—1 Wolverine.	Sept. 1 to Mar. 31.
Trapping—Unit 15(A)	No open season.
Trapping—Unit 15(B), (C)—No limit.	Nov. 10 to Feb. 28.
Crow:	
40 per day	Sept. 1 to Nov. 17 and Mar. 1 to Apr 15.

Bag limits	Open season
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow and White-tailed):	
Unit 15(A), (B)—20 per day 40 in possession.	Aug. 10 to Mar 31.
Unit 15(C)—20 per day, 40 in possession.	Aug. 10 to Dec. 31.
5 per day, 10 in possession.	Jan. 1 to Mar. 31.

(16) GMU 16. (i) Game Management Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its junction with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kanitula Glacier;

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) Public Lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

Bag limits	Open season
Black Bear:	
Unit 16—3 bears.	July 1 to June 30.
Caribou:	
Unit 16—1 caribou	Aug. 10 to Oct. 31.
Moose:	
Unit 16(B)—Kalgin Island—No Federal public land.	No open season.
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull.	Sept. 1 to Sept. 15.
Unit 16(B)—Remainder—1 moose, however antlerless moose may be taken only from Sept. 25 to Sept. 30 and from Dec. 1 to Feb. 28 by Federal registration permit only.	Sept. 1 to Sept. 30. Dec. 1 to Feb. 28.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—30 Beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2	Dec. 15 to Jan. 15.
Trapping—No limit	Dec. 15 to Jan. 15.
Marten:	
Trapping—No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar. 31.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—4 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.

(17) GMU 17. (i) Game Management Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points, including Hagemeister Island and the Walrus Islands;

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) All islands and adjacent waters within one-half mile of each island in the Walrus Islands State Game Sanctuary, as described in Alaska Statute 16.20.110, except for those islands known as the Twins and their adjacent waters are closed to hunting;

(B) The Upper Mulchatna Controlled Use Area consisting of Unit 17 (B), is closed to the use of any motorized vehicle, except aircraft and boats and in legally permitted hunting camps, for hunting big game from August 1 to November 1, including transportation of big game hunters and parts of big game.

(iii) The following areas are closed to the trapping of furbearers for subsistence as indicated: all islands within the Walrus Islands State Game Sanctuary as described in Alaska Statute 16.20.110.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

Bag limits	Open season
Black Bear:	
Unit 17—3 bears	July 1 to June 30.
Brown Bear:	
Unit 17(A), (C)—1 bear every four regulatory years.	Sept. 10 to Oct. 10. April 10 to May 25.
Unit 17(B)—1 bear every four regulatory years.	Sept. 20 to Oct. 10. May 10 to May 25.
Caribou:	
Unit 17(A), and (C)—that portion of Unit 17(C) west of Nushagak River	No open season.

Bag limits	Open season
Unit 17(B), and (C)—that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10 to Aug. 31, and no more than 1 caribou may be taken Sept. 1 to Nov. 30.	Aug. 10 to Mar. 31.
Sheep:	
Unit 17—1 ram with full curl horn or larger.	Aug. 10 to Sept. 20.
Moose:	
Unit 17(A)	No open season.
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull.	Sept. 1 to Sept. 20.
Unit 17(B)—Remainder—1 bull.	Aug. 20 to Sept. 20. Dec. 1 to Dec. 31
Unit 17(C)—that portion that includes the lowithis drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull.	Aug. 20 to Sept. 15.
Unit 17(C)—Remainder—1 bull.	Aug. 20 to Sept. 15. Dec. 1 to Dec. 31.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 17(A)—20 Beaver per season.	Jan. 1 to Jan. 31.
Trapping—Unit 17(B), (C)—20 Beaver per season.	Jan. 1 to Feb. 28.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
Hunting—No limit	Dec. 1 to Mar. 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 10 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 10 to Feb. 28.
Trapping—No limit	Nov. 10 to Feb. 28.
Marten:	
Trapping—No limit	Nov. 10 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar. 31.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Feb. 28.
Cormorant:	
No limit	July 1 to June 30.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day; 30 in possession.	Aug. 10 to Apr 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Snowy Owl:	
No limit	July 1 to June 30.

(18) GMU 18. (i) Game Management Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthews, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified. The Kalskag Controlled Use Area consisting of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting big game, including transportation of any big game hunter and big game part; however, this does not apply to transportation of a big game hunter or big game part by aircraft between publicly owned airports in the controlled use area or from a publicly owned airport within the area to points outside the area;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear:	
Unit 18—3 bears	July 1 to June 30.
Brown Bear:	
Unit 18—Residents domiciled in Kwethluk—1 bear	Sept. 10 to Oct. 10. April 10 to May 25.
All others—1 bear every four regulatory years.	
Caribou:	
Unit 18—north of the Yukon River—1 caribou.	Feb. 1 to Mar. 31
Unit 18—Remainder	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of (but not including) the Andreafsky River drainage; and those portions contained in the Kanektok and Goodnews drainages.	No open season; (closed to all moose hunting).
Unit 18—Remainder—1 antlered moose. A 10 day hunt falling sometime between Dec. 1 and Feb. 28 shall also be opened by announcement of the Federal Subsistence Board. Federal public lands in Unit 18 are closed to the hunting of moose except by rural Alaska residents of Unit 18 and Upper Kalskag.	Sept. 1 to Sept. 30; Winter season to be announced.
Bat, Shrew, Rat, Mouse, and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—No limit	Nov. 1 to June 10.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
Hunting—2 Foxes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 10 to Mar. 31.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 10 to Mar. 31.
Trapping—No limit	Nov. 10 to Mar. 31.
Marten:	
Trapping—No limit	Nov. 10 to Mar. 31.
Mink and Weasel:	
Trapping—No limit	Nov. 10 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 10 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 10 to Mar. 31.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—4 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 10 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 10 to Mar. 31.
Cormorant:	
No limit	July 1 to June 30.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Snowy Owl:	
No limit	July 1 to June 30.

(19) GMU 19. (i) Game Management Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) The Upper Kuskokwim Controlled Use Area consisting of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50' W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area or from a publicly owned airport within the area to points outside the area;

(C) The Lime Village Management Area consists of that portion of Unit 19(A) drained by the Stony River from the mouth of the Stink River, including the Stink River drainage, upstream to but not including the Can Creek drainage.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 19—3 bears	July 1 to June 30.
Brown Bear:	
Unit 19(A), (D)—1 bear every four regulatory years.	Sept. 1 to May 31.
Unit 19(B)—1 bear every four regulatory years.	Sept. 10 to May 25.
Unit 19(C)	No open season.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou.	Aug. 10 to Sept. 30. Nov. 1 to Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding residents of Lime Village)—4 caribou.	Aug. 10 to Mar. 31.
Unit 19(C)—1 caribou	Aug. 10 to Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Aug. 10 to Sept. 30. Nov. 1 to Jan. 31.
Unit 19(D)—Remainder—1 caribou.	Aug. 10 to Sept. 30.
Unit 19—Lime Village Management Area—Residents domiciled in Lime Village only; no individual bag limit but a village harvest quota of 100 caribou; cows and calves—may not be taken from Apr. 1 to Aug. 9.	July 1 to June 30
Sheep:	
Unit 19—1 ram with 7/8 curl.	Aug. 10 to Sept. 20.
Moose:	
Unit 19—Lime Village Management Area—Residents of Lime Village only—No individual bag limit but a village harvest quota of 30 moose; either sex.	July 1 to June 30.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Nov. 20 to Nov. 30 and Feb. 1 to Feb. 10.	Sept. 1 to Sept. 20. Nov. 20 to Nov. 30. Feb. 1 to Feb. 10.
Unit 19(B)—1 bull	Sept. 1 to Sept. 30.
Unit 19(C)—1 bull	Sept. 1 to Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 bull.	Sept. 1 to Sept. 10.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1 to Sept. 30. Dec. 1 to Feb. 28.
Unit 19(D)—Remainder—1 bull.	Sept. 1 to Sept. 30. Dec. 1 to Dec. 15.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—50 Beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Mar. 31.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 1 to Feb. 28.
Trapping—No limit	Nov. 1 to Feb. 28.
Marten:	
Trapping—No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Raccoon:	
No limit	July 1 to June 30
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar 31.
Trapping—No limit	Nov. 1 to Mar. 31.

Bag limits	Open season
Grouse (Spruce, Blue, Ruffed and Sharp-tailed): 15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed): 20 per day, 40 in possession.	Aug. 10 to Apr. 30.

(20) GMU 20. (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River;

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Denali National Preserve and lands added to Denali National Park on December 2, 1980 are open to subsistence.

(B) Delta Controlled Use Area consisting of the drainages of the Tanana River south of the Alaska Highway, from the west bank of the Johnson River to and including drainages of the Delta River north of north bank of Miller Creek and Canwell Glacier in Units 13(B), 20(A), and 20(D) is closed to the use of any motorized vehicle or pack animal for hunting, from August 5 through August 25; however, this does not prohibit motorized access to the area for hunting, or transportation of game on the Richardson Highway;

(C) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(D) Birch Lake and the area within one-half mile of Birch Lake (Mile 56 Richardson Highway) is closed to the taking of big game;

(E) Harding Lake and the area within one-half mile of Harding Lake (Mile 44 Richardson Highway) is closed to the taking of big game;

(F) Lost Lake and the area within one-half mile of Lost Lake (Mile 56 Richardson Highway) is closed to the taking of big game with firearms and crossbows;

(G) The Delta Junction Closed Area (Unit 20(D) near Delta Junction), which consists of that portion of Unit 20(D) bounded by a line beginning at the confluence of Donnelly Creek and the Delta River, then up Donnelly Creek to the Richardson Highway (Mile 238), then north along the east side of the highway to the "12 mile crossing trail" (Mile 252.4), then east along the south side of the "12 mile crossing trail" and across Jarvis Creek to the 33-Mile Loop Road then northeast along the 33-Mile Loop Road to the intersection with the Alaska Highway (Mile 1414), then southeast along the north side of the Alaska Highway to the bridge at Sawmill Creek (Mile 1403.9), then down the west bank of Sawmill Creek to its confluence with Clearwater Creek and down the south bank of Clearwater Creek to its confluence with the Tanana River, then down the Tanana River to its confluence with the Delta River, and upstream along the east bank of the Delta River to the point of beginning at Donnelly Creek, is closed to the taking of moose;

(H) The Glacier Mountain Controlled Use Area consisting of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway is closed to the use of any motorized vehicle for hunting, from August 5 to September 20; however, this does not prohibit motorized access via, or transportation of game on, the Taylor Highway or any airport;

(I) The Wood River Controlled Use Area consisting of that portion of Unit 20(A) bounded on the north by the south side of the Rex Trail beginning at its intersection with the Totatlanika River then easterly along the Rex trail to Gold King airstrip, then from Gold King airstrip along the trail's extension along the north side of Japan Hills to the Wood River; on the east by the Wood River, including the Wood River drainage upstream from and including the Snow Mountain Gulch Creek drainage; on the south by the divide separating the Yanert River drainage from the drainages of Healy Creek, Moody Creek, Montana Creek and the Wood River; and on the west by the east bank of the Nenana River from the divide separating the drainage of the Yanert River and Montana Creek north to Healy Creek, then easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters, then along a straight line to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, and then down the east bank of the Totatlanika River to the Rex Trail is closed to the use of any motorized vehicle except aircraft for big game hunting and transportation of any big

game part, from August 1 through September 30;

(J) The Macomb Plateau Controlled Use Area, consisting of that portion of Unit 20(D) south of the Alaska Highway, draining into the south side of the Tanana River between the east bank of the Johnson River upstream to Prospect Creek, and the east bank of Bear Creek (Mile 1357.3), is closed to the use of any motorized vehicle, except a floatplane on Fish Lake, for hunting or transportation of any game part, from August 10 through September 30;

(K) The Yanert Controlled Use Area, consisting of that portion of Unit 20(A) drained by the Nenana River upstream from and including the Yanert Fork drainage, is closed to the use of any motorized vehicle, except aircraft, for big game hunting and transportation of any big game part; however, this does not prohibit motorized access via, and transportation of game on, the Parks Highway;

(L) The Minto Flats management Area consisting of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Domes, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(M) The Fairbanks Management Area consists of the Goldstream subdivision (SE¼ SE¼ section 28 and section 33, Township 2 North, Range 1 West, and Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning is open to moose hunting by bow and arrow only;

(N) The Ferry Trail Management Area consisting of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only;

(O) The Healy-Lignite Management Area consisting of that portion of Unit 20(A) that includes the entire Lignite Creek drainage, and that portion of the Nenana River drainage south of the Lignite Creek drainage and north of a boundary beginning at the confluence of the Nenana River and Healy Creek, then easterly along the south bank of Healy Creek to its confluence with Coal Creek, then northeasterly to the headwaters of Sanderson Creek at Usibelli Peak is open to hunting by bow and arrow only.

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—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 20—3 bears	July 1 to June 30.
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years.	Sept. 1 to May 31.
Unit 20(E)	No open season.
Caribou:	
Units 20 (A), (B), (C) and (D).	No open season.
Unit 20(E)—that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstuck Creek—1 caribou.	Aug. 10 to Sept. 30. Dec. 1 to Feb. 28.
Unit 20(E)—Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails, as described in the permit—1 caribou by State registration permit only; however, only bulls may be taken prior to Dec. 1.	Aug. 10 to Sept. 30. Dec. 1 to Feb. 28.
Unit 20(F)—South of the Yukon River and west of the Dalton Highway—1 bull.	Aug. 10 to Sept. 20.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10 to Sept. 30.	Aug. 10 to Sept. 30. Nov. 26 to Dec. 10. Mar. 1 to Mar. 15.
Unit 20(F)—Remainder—1 bull.	Aug. 10 to Sept. 30.
Moose:	
Unit 20(A)—the Ferry Trail Management Area and the Yanert Controlled Use Area—1 bull with a spike-fork or 50-inch antlers.	Sept. 1 to Sept. 20.
Unit 20(A)—Remainder 1 bull.	Sept. 1 to Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only (Source of permits—Yukon Flats National Wildlife Refuge, Fairbanks AK).	Sept. 1 to Sept. 20 Jan. 10 to Feb. 28
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 bull.	Sept. 1 to Sept 20.
Unit 20(B)—Remainder—(except the Fairbanks Management Area; No subsistence)—1 bull.	Sept. 1 to Sept. 20.
Unit 20(C)—1 bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1 to Sept. 20.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.	Sept. 1 to Sept. 15.

Bag limits	Open season
Unit 20(E)—Remainder—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 bull.	Sept. 5 to Sept. 25.
Unit 20(F)—1 bull	Sept. 1 to Sept. 25.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 20(A)—25 Beaver per season.	Feb. 1 to Apr. 15.
Trapping—Unit 20(B)—that portion of the Chena River downstream from its confluence with the Little Chena River, and Badger (Piledriver) Slough downstream from Plack Road.	No open season.
Trapping—Unit 20(B)—Remainder of Unit 20(B) and Unit 20(C), (E), and that portion of 20(D) draining into the north bank of the Tanana River, including the islands in the Tanana River—25 Beaver per season.	Nov. 1 to Apr. 15.
Trapping—Unit 20(D)—Remainder; 15 Beaver per season.	Feb. 1 to Apr. 15.
Trapping—Unit 20(F)—50 Beaver per season.	Nov. 1 to Apr. 15
Coyote:	
Hunting—Unit 20—2 Coyotes.	Sept. 1 to Apr. 30.
Trapping—Unit 20(E)—No limit.	Nov. 1 to Feb. 28.
Trapping—Unit 20—Remainder (except 20(D))—No limit.	Nov. 1 to Mar. 31.
Unit 20(D)	No open season.
Fox, Red, (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Feb. 28.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—Unit 20(E)—2 Lynx.	Nov. 1 to Jan. 31.
Trapping—Unit 20(E)—No limit.	Nov. 1 to Jan. 31.
Hunting—Unit 20—Remainder (except (D))—2 Lynx.	Dec. 1 to Jan. 31.
Trapping—Unit 20—Remainder (except (D))—No limit.	Dec. 1 to Jan. 31.
Unit 20(D)	No open season.
Marten:	
Trapping—No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Feb. 28.
Muskrat:	
Trapping—Unit 20(E)—No limit.	Sept. 20 to June 10.
Trapping—Unit 20—Remainder (except (D))—No limit.	Nov. 1 to June 10.
Unit 20(D)	No open season.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30
Wolf:	
Hunting—Unit 20—10 Wolves per season.	Aug. 10 to Apr. 30.
Trapping—Unit 20(E)—No limit.	Oct. 1 to Apr. 30.
Trapping—Unit 20—Remainder (except (D))—No limit.	Nov. 1 to Mar. 31.
Unit 20(D)	No open season.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar 31.
Trapping—No limit	Nov. 1 to Feb. 28.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 per day are sharp-tailed grouse.	Aug. 25 to Mar 31.
Unit 20—Remainder—15 per day, 30 in possession.	Aug. 10 to Mar 31
Ptarmigan (Rock, Willow and White-tailed):	
Unit 20(D)—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession.	Aug. 10 to Apr. 30.

(21) GMU 21. (i) Game Management Unit 21 consists of drainages into the Yukon River upstream from Paimiut to but not including the Tozitna River drainage on the north bank and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream to and including the Dulbi River drainage;

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(b) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) Public Lands within the following areas are closed to subsistence take or subsistence take is restricted as specified:

(A) The Koyukuk Controlled Use Area consisting of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or from a publicly owned airport within the area to points outside the area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station;

(B) Paradise Controlled Use Area consisting of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of

Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or from a publicly owned airport within the area to points outside the area;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—Those residents listed under eligibility are the qualified subsistence users.

—"No open season" means no Federal subsistence season.

—"No determination" indicates open to Alaska rural residents.

Bag limits	Open season
Black Bear:	
Unit 21—3 bears	July 1 to June 30.
Brown Bear:	
Unit 21—1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 21 (A), (B), (C), (E)—1 caribou.	Aug. 10 to Sept. 30.
Unit 21(D) North of the Yukon River and east of the Koyukuk River—1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10 to Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou head)—5 caribou per day, however, cow caribou may not be taken May 16–June 30.	July 1 to June 30.
Moose:	
Unit 21(A)—1 bull	Sept. 5 to Sept. 30. Nov. 1 to Nov. 30.
Unit 21 (B) and (C)—1 bull	Sept. 5 to Sept. 25.
Unit 21(D)—1 moose; antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5 to Sept. 25. Feb. 1 to Feb. 5.
Unit 21(E)—1 moose; however, only bulls may be taken from Sept. 5–Sept. 25.	Sept. 5 to Sept. 25. Feb. 1 to Feb. 10.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—50 Beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Feb. 28.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 1 to Feb. 28.
Trapping—No limit	Nov. 1 to Feb. 28.
Marten:	
Trapping—No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.

(22) GMU 22. (i) Game Management Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers;

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 drainage into the Bering Sea north of but not including the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

(ii)

Bag limits	Open season
Black Bear:	
Unit 22—3 bears	July 1 to June 30.
Brown Bear:	
Unit 22(A)—1 bear every four regulatory years.	Sept. 1 to Oct. 31. Apr. 15 to May 25.
Unit 22(C)—1 bear every four regulatory years.	Sept. 1 to Oct. 31. May 10 to May 25.
Unit 22—Remainder—1 bear every four regulatory years.	Sept. 1 to Oct. 31. Apr. 15 to May 25.
Caribou:	
Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1 to June 30.
Unit 22(C), (D) and (E)	No open season.
Moose:	
Unit 22(A)—1 bull	Aug. 1 to Sept. 30. Dec. 1 to Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31—no person may take a cow accompanied by a calf.	Aug. 1 to Jan. 31.
Unit 22(C)—1 bull	Sept. 1 to Sept. 14.
Unit 22(D)—1 moose; however antlerless moose may be taken only from Aug. 1–Dec. 31—no person may take a cow accompanied by a calf.	Aug. 1 to Jan. 31.
Unit 22(E)—1 moose; No person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 22(A) and (B)—50 Beaver per season.	Nov. 1 to June 10.
Trapping—Unit 22(C), (D) and (E)—50 Beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phases):	
Hunting—2 Foxes	Sept. 1 to Ap.. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.

Bag limits	Open season
Trapping—No limit	Nov. 1 to Apr. 15.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 1 to Apr. 15.
Trapping—No limit	Nov. 1 to Apr. 15.
Marten:	
Trapping—No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 1 to Apr. 15.
Cormorant:	
No limit	July 1 to June 30.
Grouse (Spruce, Blue Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Snowy Owl:	
No limit	July 1 to June 30.

(23) GMU 23. (i) Game Management Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) Public lands within the following area are closed to subsistence take or subsistence take is restricted as specified: The Noatak Controlled Use Area, consisting of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner for big game hunting, including transportation of big game hunters or game.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257–2572).

Bag limits	Open season
Black Bear:	
Unit 23—3 bears	July 1 to June 30.
Brown Bear:	
Unit 23—1 bear every four regulatory years.	Sept. 1 to Oct. 10. Apr. 15 to May 25.
Caribou:	
Unit 23—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1 to June 30.
Sheep:	
Unit 23—1 ram with ⅞ curl horn or larger. In that portion of Unit 23 south and east of the Noatak River (excluding Gates of the Arctic National Park), a State registration permit is required. A harvest quota will be announced before the permit hunt.	Aug. 10 to Sept. 20.
Unit 23—1 sheep. In that portion of Unit 23 south and east of the Noatak River (excluding Gates of the Arctic National Park), the hunt will be closed when 30 sheep have been taken. From Oct. 1–Apr. 30, Federal public lands will be closed to sheep hunting, except by residents of Unit 23 living north of the Arctic Circle.	Oct. 1 to Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Kivalina River drainage—1 moose; however, antlerless moose may be taken only from Sept. 1 to Mar. 31; no person may take a cow accompanied by a calf.	July 1 to Mar. 31.
Unit 23—Remainder—1 moose; however, antlerless moose may be taken only from Sept. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 23—the Kobuk and Selawik River drainages—50 Beaver per season.	Nov. 1 to June 10.
Trapping—Unit 23—Remainder—30 Beaver per season.	Nov. 1 to June 10.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phases):	
Hunting—2 Foxes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Apr 15.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Dec. 1 to Jan. 15.
Trapping—3 Lynx	Dec. 1. to Jan. 15.
Marten:	
Trapping—No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 1 to Apr. 15.
Cormorant:	
No limit	July 1 to June 30.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30
Snowy Owl:	
No limit	July 1 to June 30.

(24) GMU 24. (i) Game Management Unit 24 consists of the Koyukuk River Drainage upstream from but not including the Dulbi River drainage;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(B) The Kanuti Controlled Use Area, consisting of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose

hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or from a publicly owned airport within the area to points outside the area;

(C) The Koyukuk Controlled Use Area consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57' N. lat., 156°41' W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning. The area is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in The Controlled Use Area or from a publicly owned airport within the area to points outside the area; all hunters on the Koyukuk River passing the Department of Fish and Game operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to department personnel at the check station.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 24—3 Bears	July 1 to June 30.
Brown Bear:	
Unit 24—that portion of the Koyukuk River drainage upstream from, and including the Alatna River drainage.; (Residents of Anaktuvuk Pass—1 bear every regulatory year) All other subsistence hungers—1 bear every four regulatory years.	Sept. 1 to May 31.
Unit 24—Remainder—1 Bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10 to Sept. 30.
Unit 24—Remainder—5 caribou per day; however, cow Caribou may not be taken May 16-June 30.	July 1 to June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep.	Aug 1 to Apr. 30.
Unit 24—Remainder—1 ram with ⅞ curl horn or larger.	Aug. 10 to Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21-Sept. 25, Dec. 1-Dec. 10, and Mar. 1-Mar 10.	Sept. 5 to Sept. 25. Dec. 1 to Dec. 10. Mar. 1 to Mar. 10.
Unit 24—that portion that includes the John River drainage upstream from but including the Hunt Fork drainage—1 moose.	Aug. 1 to Dec. 31.
Unit 24—the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21-Sept. 25 and Mar. 1-Mar. 10.	Aug. 25 to Sept. 25. Mar. 1 to Mar. 10.
Unit 24—Remainder—1 bull.	Aug. 25 to Sept. 25.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—50 Beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
Hunting—2 coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 1 to Feb. 28.
Trapping—No limit	Nov. 1 to Feb. 28.
Marten:	
Trapping—No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No Limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground, Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—10 Wolves	Aug. 10 To Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Wolverine:	
Hunting—1 wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp—tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30

(25) GMU 25. (i) Game Management Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River;

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjek Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the

Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25 and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

(B) The Arctic Village Sheep Management Area encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of State Game Management Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain. The boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages. The boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide. The boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the most southerly major fork of the headwaters of Cane Creek. From this peak the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik. A map showing the Arctic Village Sheep Management Area may be obtained by contacting the U.S. Fish and Wildlife Service, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, Alaska 99503.

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 25—3 Bears	July 1 to June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1 to Apr. 30.
Unit 25(C)	Aug. 10 to Sept. 20. Feb. 15 to March 15.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10 to Sept. 30.
Sheep:	
Unit 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Federal public lands are closed to sheep hunting except by residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.	Aug. 10 to Apr. 30.
Unit 25(A)—Remainder—3 sheep per year; the Aug. 10–Sept. 20 season is restricted to 1 ram with ⅞ curl horn or larger. A State registration permit is required for the Oct. 1–Apr. 30 season.	Oct. 1 to Apr. 30. Aug. 10 to Sept. 20.
Moose:	
Unit 25(A)—1 bull	Aug. 25 to Sept. 25. Dec. 1 to Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from but excluding the Coleen River drainage—1 bull.	Aug. 25 to Sept. 30. Dec. 1 to Dec. 10.
Unit 25(B)—Remainder—1 bull.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 15.
Unit 25(C)—1 bull	Sept. 1 to Sept. 15.
Unit 25(D) (West)—that portion of Unit 25(D) lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by Federal registration permit only.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 10. Feb. 18 to Feb. 28.
Unit 25(D)—Remainder—1 bull.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 20.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Beaver:	
Trapping—Unit 25—Remainder—50 Beaver per season.	Nov. 1 to Apr. 15.
Trapping—Unit 25(C)—25 Beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Feb. 28.
Hares (Snowshoe and Arctic):	
Hunting—No limit	July 1 to June 30.
Lynx:	
Hunting—Unit 25(C)—2 Lynx.	Dec. 1 to Jan. 31.
Trapping—Unit 25(C)—No limit.	Dec. 1 to Jan. 31.
Hunting—Unit 25—Remainder—2 Lynx.	Nov. 1 to Feb. 28.
Trapping—Unit 25—Remainder—No limit.	Nov. 1 to Feb. 28.
Marten:	
Trapping—No limit	Nov. 1 to Feb 28.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Feb. 28.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—Unit 25(A)—No limit.	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Hunting—Unit 25—Remainder—10 Wolves.	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Mar. 31.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—Unit 25(C)—No limit.	Nov. 1 to Feb. 28.
Hunting—1 Wolverine	Sept. 1 to Mar. 31.

Bag limits	Open season
Trapping—Unit 25—Remainder—No limit.	Nov. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Unit 25—Remainder—15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed):	
Unit 25(C)—those portions within 5 miles of Alaska Route 6 (Steese Highway) and Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Unit 25—Remainder—20 per day, 40 in possession.	Aug. 10 to Apr. 30.

(26) GMU 26. (i) Game Management Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska.

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage, and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) Public lands within the following areas are closed to subsistence take or subsistence take is restricted as specified.

(A) The GMU 26(A) Controlled Use Area, consisting of Unit 26(A), from August 1 through August 31 is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose. No hunter may take or transport a moose, or part of a moose in GMU 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports.

(B) The Prudhoe Bay Closed Area is closed to the taking of big game; this closed area consists of the area bounded by a line beginning at 70°22′ N. lat., 148° W. long., then running south approximately 14 miles to a point at 70°10′ N. lat., 148° W. long., then west approximately 15 miles to a point at 70°10′ N. lat., 148°40′ W. long., then north approximately two miles to a point at 70°12′ N. lat., 148°40′ W. long., then west approximately eight miles to a point at 70°12′ N. lat., 148°56′ W. long., then north approximately two miles to a point at 70°15′ N. lat., 148°56′ W. long., then west approximately 12 miles to a point at 70°15′ N. lat., 149°28′ W. long., then north approximately 12 miles to a point at 70°26′ N. lat., 149°28′ W. long., then east approximately 14 miles to a point at 70°26′ N. lat., 148°52′ W. long., then south approximately 2 miles to a point at 70°24′ N. lat., 148°52′ W. long., then east approximately 16 miles to a point at 70°24′ N. lat., 148°11′ W. long., then south approximately 2 miles to a point at 70°24′ N. lat., 148°11′ W. long., then east approximately 6 miles to the point of beginning.

(C) The Dalton Highway Corridor Management Area, consisting of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to the Prudhoe Bay Closed Area, is closed to hunting; however, big game and small game may be taken in the area by bow and arrow only; no motorized vehicle, except aircraft, boats, and licensed highway vehicles, may be used to transport game or hunters within the Dalton Highway Corridor Management Area;

Note: There are private land areas within many Federal public land units. These regulations apply only to Federal public lands unless otherwise indicated. It is the responsibility of the subsistence user to be aware of private inholdings.

—"No open season" means no Federal subsistence season.

—Those residents listed under eligibility are the qualified subsistence users. "No determination" indicates open to Alaska rural residents. However, National Parks, Monuments, and Preserves are open only to Park Service qualified subsistence users. Subsistence users must be local rural residents of National Park Service areas. For more information, contact the National Park Service in Anchorage, Alaska (telephone 907/257-2572).

Bag limits	Open season
Black Bear:	
Unit 26—3 Bears	July 1 to June 30
Brown Bear:	
Unit 26(A)—east of 159° W. long. (residents of Anaktuvuk Pass)—1 bear every regulatory year.	Sept. 1 to May 31.
Unit 26(A)—Other subsistence hunters—1 bear every four regulatory years.	Sept. 1 to May 31
Unit 26—Remainder—1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1 to Apr. 30.	July 1 to Apr. 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year.	July 1 to Apr. 30.
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1 to Apr. 30.
Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with ⅞ curl horn or larger.	Aug. 10 to Sept. 20.
Unit 26(C)—3 sheep per year; the Aug. 10 to Sept. 20 season is restricted to 1 ram with ⅞ curl horn or larger. A State registration permit is required for the Oct. 1 to Apr. 30 season.	Oct. 1 to Apr. 30. Aug. 10 to Sept. 20.
Moose:	
Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1 to Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26(B) Remainder and (C)—1 moose.	Aug. 1 to Dec. 31.
Musk Oxen:	
Unit 26(B) and (C)—1 bull by Federal registration permit only.	Oct. 1 to Oct. 31. Mar. 1 to Mar. 31.
Bat, Shrew, Rat, Mouse and Porcupine:	
No limit	July 1 to June 30.
Coyote:	
Hunting—2 Coyotes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase):	
Hunting—2 Foxes	Sept. 1 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
Hunting—2 Foxes	Nov. 1 to Feb. 15.
Trapping—No limit	Nov. 1 to Apr. 15.
Hares (Snowshoe and Arctic):	
No limit	July 1 to June 30.
Lynx:	
Hunting—2 Lynx	Nov. 1 to Apr. 15.
Trapping—No limit	Nov. 1 to Apr. 15.

Bag limits	Open season
Marten:	
Trapping—No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
Trapping—No limit	Nov. 1 to Jan. 31.
Muskrat:	
Trapping—No limit	Nov. 1 to June 10.
Otter (land only):	
Trapping—No limit	Nov. 1 to Apr. 15.
Squirrel (Red, Ground and Flying):	
Hunting—No limit	July 1 to June 30.
Trapping—No limit	July 1 to June 30.
Wolf:	
Hunting—No limit	Aug. 10 to Apr. 30.
Trapping—No limit	Nov. 1 to Apr. 15.
Wolverine:	
Hunting—1 Wolverine	Sept. 1 to Mar. 31.
Trapping—No limit	Nov. 1 to Apr. 15.
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Snowy Owl:	
No limit	July 1 to June 30.

§ ____.24 Subsistence taking of fish.

(a) Regulations in this section apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska. These regulations apply to: (1) Non-navigable waters on Federal public lands, except in Glacier Bay National Park where all waters are closed to subsistence harvest, and (2) navigable waters in those cases where Federal title and/or jurisdiction is specifically identified herein.

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the State of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section.

(c) The following definitions shall apply to all regulations contained in this document.

Abalone Iron is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61cm) in length and with all prying edges rounded and smooth.

Anchor is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

Bag Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Beach seine is a floating net designed to surround fish which is set from and hauled to the beach.

Crab means the following species: *Paralithodes camshatica* (red king crab); *Paralithodes platypus* (blue king crab); *Lithodes couesi*; *Lithodes aequispina* (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); *Cancer magister* (Dungeness crab).

Dip net is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear is any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Fishwheel is a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net is a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

Grappling hook is a hooked device with flukes or claws and attached to a line and operated by hand.

Groundfish—Bottomfish means any marine finfish except halibut, osmerids, herring and salmonids.

Hand purse seine is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line though one or more rings attached to the lead line is not allowed.

Hand troll gear consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

Herring pound is an enclosure used primarily to retain herring alive over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Inclusive season dates means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date speciifed designates the first day of the period, and the second date specified designates the last day of the period.

Lead is a length of net employed for guiding fish into a seine or set gill net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

Long line is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

Net gear site means the in-water location of stationary net gear.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

Purse seine is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

Rockfish means all species of the genus *Sebastes*.

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel is a hand-operated implement for digging clams or cockles.

Stretched measure means the average length of a any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

To operate fishing gear means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl is a bag-shaped net towed through the water to capture fish or shellfish.

(d) Methods, Means, and General Restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing:

(i) Gear specified in definitions in subsection c.

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section or unless, prior to the sale, the prospective buyer or seller obtains a determination from the Board that the sale constitutes customary trade.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter, or the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live non-indigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish—No person may possess, transport, give, receive or barter subsistence-taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder.

(f) For detailed descriptions of Fishery Management Areas and Pertinent Restrictions-for defined descriptions of Fishery Management Areas, see Alaska Fishing Regulations.

(1) Kotzebue-Northern Area. At this time, the Federal Government is exerting its control only on subsistence fishing in non-navigable fresh waters on Federal public lands in the Kotzebue-Northern Area.

(i) Allowed gear and specifications:

(A) Salmon may be taken only by gill nets or beach seines.

(B) Fish other than salmon may be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, and lead.

(C) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(E) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(F) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(G) Fish may be taken at any time except that during the weekly fishing closures of the commercial salmon fishing season in the Kotzebue District commercial fishermen may not fish for subsistence purposes.

(ii) Northern District. Only those residents domiciled in the Northern District, except for those domiciled in State of Alaska Game Management Unit 26–B, may take fish in that district.

(iii) Kotzebue District. (A) In the Kotzebue District, kegs or buoys attached to subsistence gill nets may be any color except red.

(B) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in aggregate length nor 12 meshes in depth, nor have a mesh size larger than seven inches.

(C) Only those residents domiciled in the Kotzebue District may take subsistence salmon, sheefish, and char in the district.

(2) Norton Sound-Port Clarence Area. At this time, the Federal Government is exerting its control only on subsistence fishing in non-navigable fresh waters on the Federal public lands in the Norton Sound-Port Clarence Area.

(i) General Area Regulations. (A) Salmon may only be taken by gill net, beach seine, or fishwheel.

(B) Fish other than salmon may be taken by set gill net, drift net, beach seine, fishwheel, pot, long line, fyke net, jigging gear, spear, and lead.

(C) A gill net may not obstruct more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(D) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(E) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(F) Except as provided in this subsection, fish may be taken for subsistence purposes without a subsistence fishing permit. A subsistence fishing permit is required as follows:

(1) In the Port Clarence District: Pilgrim River drainage including Salmon Lake;

(2) In the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(G) Only one subsistence fishing permit will be issued to each household per year.

(H) Only those residents domiciled in the Norton Sound-Port Clarence Area may take salmon in that area.

(I) Only those residents domiciled within 20 miles of the coast between Point Romanof and Cape Prince of Wales and on the St. Lawrence Island, may take herring and herring roe in those locations.

(ii) The Norton Sound District. (A) In the Norton Sound District, fish may be taken at any time except as follows:

(B) In Subdistrict 1 from June 15 through August 31, salmon may be taken only from 6 p.m. Monday until 6 p.m. Wednesday and from 6 p.m. Thursday until 6 p.m. Saturday.

(C) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season [except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gill nets which have a mesh size that does not exceed 4½ inches, and with beach seines].

(D) In the Unalakleet River from June 1 through July 15, salmon may be taken from 8 a.m. Monday until 8 p.m. Saturday.

(E) In the Norton Sound District, kegs or buoys attached to subsistence gill nets may be any color except red.

(F) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gill net in the aggregate.

(G) Gill nets with a mesh size of less than four and one-half inches and beach seines may not be used in the Sinuk River upstream of Alaska Department of Fish and Game regulatory markers placed two miles above the mouth, in the Nome River, and in the Solomon River upstream from Alaska Department of Fish and Game regulatory markers places near the village of Solomon.

(H) In the Nome River, no person may operate more than 50 feet of gill net in the aggregate.

(I) The Nome River, from its terminus upstream for a distance of 200 yards and upstream from an Alaska Department of Fish and Game regulatory marker located near Osborn, is closed to the taking of fish.

(iii) The Port Clarence District. (A) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6 p.m. Thursday until 6 p.m. Tuesday.

(B) In the Port Clarence District, Salmon Lake, its tributaries, and within 300 feet of the Alaska Department of Fish and Game regulatory markers placed at the outlet of Salmon Lake, are closed to subsistence fishing from July 15 through August 31.

(3) Yukon Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters in the area north of 61° north latitude, south of 61°21′ north latitude, west of 163°40′ longitude and east of the Bering Sea shoreline including Hazen Bay. In the remainder of the Yukon Area Federal subsistence fishing regulations only apply to non-navigable waters on Federal public lands.

(i) Unless otherwise restricted, salmon may be taken in the Yukon Area at any time.

(ii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this section.

(iii) Unless otherwise specified in this section, fish other than salmon may be taken only by set gill net, drift gill net, beach seine, fishwheel, long line, fyke net, dip net, jigging gear, spear, or lead, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes, except that in Subdistrict 4–A, upstream from the mouth of Stink Creek, a commercial fisherman may, at any time, assist subsistence fishermen in the operation of subsistence fishing gear;

(B) The aggregate length of set gill net in use by an individual may not exceed 150 fathoms and each drift gill net in use by an individual may not exceed 50 fathoms in length;

(C) In Subdistricts 4, 5 and 6, it is unlawful to set subsistence fishing gear within 20 feet of other operating commercial or subsistence fishing gear;

(D) A gill net may obstruct not more than one-half the width of any fish stream; a stationary fishing device may obstruct not more than one-half width of any salmon stream.

(iv) Salmon may be taken only by set gill net or fishwheel. No person may operate a gill net having a mesh size larger than six inches after a date specified by emergency order issued between July 5 through July 25.

(v) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(vi) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(vii) In Districts 1, 2, and 3, commercial fishermen may not take salmon for subsistence purposes by gill nets larger than six-inch mesh during periods established by emergency order.

(viii) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4–A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length

during the seasons described in this section.

(ix) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(x) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from Alaska Department of Fish and Game regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.-Canada border;

(C) For the Tanana River drainage above the mouth of the Wood River;

(D) For whitefish and suckers in the waters listed;

(E) For the taking of pike in waters of the Tolovana River drainage upstream of its confluence with the Tanana River;

(F) For the taking of salmon in Subdistricts 6–A and 6–B.

(xi) Except as otherwise provided, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(xii) In addition to the subsistence fishing permit conditions, permits issued for fish other than salmon may also designate restrictive measures for the conservation of salmon.

(xiii) Only one subsistence fishing permit will be issued to each household per year.

(xiv) Only those residents domiciled within 20 miles of the coast between the terminus of the Black River and the westernmost point of the Naskonat Peninsula may take herring and herring roe in that location.

(xv) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, including the community of Stebbins, may take salmon in the Yukon Area.

(xvi) Only those residents domiciled in rural locations in the Yukon River drainage, as determined by the Federal Subsistence Board including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak may take Yukon River Fall chum salmon for subsistence purposes.

(xvii) Only those residents domiciled in rural locations in the Yukon Area, as determined by the Federal Subsistence Board, may take freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish, in the Yukon Area.

(xviii) The following locations in the upper Yukon River drainage are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit designating measures for the protection of other fish: the following streams and within 500 feet of their mouths: Birth Creek; Dall River, June 10 through September 10;

(xix) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River, upstream from a point five miles downstream of the State highway crossing;

(B) Fish Creek, upstream from the mouth of Bonanza Creek;

(C) Bonanza Creek;

(D) Jim River, including Prospect Creek and Douglas Creek;

(E) South Fork of the Koyukuk River system upstream from the mouth of Jim River;

(F) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork;

(G) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(xx) The main Tanana River and its adjoining sloughs are closed to subsistence fishing between the mouth of the Salcha River and the mouth of the Cerstle River, except that salmon may be taken in the area upstream of the Richardson Highway bridge to the mouth of Clearwater Creek after November 20.

(xxi) Waters of the Tanana River drainage are closed to the subsistence taking of pike between the mouth of the Kantishna River and Delta River at Black Rapids on the Richardson Highway and Cathedral Rapids on the Alaska Highway, except that pike may be taken for subsistence purposes in the Tolovana River drainage upstream from its confluence with the Tanana River.

(xxii) The Delta River is closed to subsistence fishing, except that salmon may be taken after November 20.

(xxiii) The following locations are closed to subsistence fishing:

(A) The following rivers and creeks and within 500 feet of their mouths: Delta Clearwater River (Clearwater Creek at 64°06' N. lat., 145°34' W. long), Richardson Clearwater Creek (Clear Creek at 64°14' N. lat., 146°16' W. long), Goodpaster River, Chena River, Little Chena River, Little Salcha River, Blue Creek, Big Salt River, Shaw Creek, Bear Creek, McDonald Creek, Moose Creek, Hess Creek, and Beaver Creek;

(B) Ray River and Salcha River upstream of a line between Alaska Department of Fish and Game regulatory markers located at the mouth of the rivers;

(C) Deadman, Jan, Boleo, Birch, Lost, Harding, Craig, Fielding, Two-Mile, Quartz, and Little Harding lakes;

(D) Piledriver and Badger (Chena) sloughs.

(xxiv) The following waters are closed to the taking of chum salmon from August 15 through December 31:

(A) Toklat River.

(B) Kantishna River from the mouth of the Toklat River to its confluence with the Tanana River.

(xxv) Salmon may be taken only by set gill nets in those locations described below after July 19:

(A) Waters of the Black River including waters within one nautical mile of its terminus;

(B) Waters of Kwikluak Pass downstream of Agmulegut and the waters of Kwemeluk Pass;

(C) Waters of Alakanuk Pass downstream from the mouth of Kuiukpak Slough;

(D) Waters of Kwiguk Pass downstream to the mouth of Kawokhawik Slough;

(E) Waters of Kawanak Pass downstream from Sea Cull Point;

(F) Waters of Apoon Pass downstream from the mouth of the Kotlik River and waters of Okwega Pass downstream from its confluence with Apoon Pass;

(G) Waters within one nautical mile seaward from any grassland bank in District 1.

(xxvi) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season except:

(A) Through July 19 in Districts 1 and 2 subsistence fishing periods will be established by emergency order every other weekend during commercial salmon fishing closures;

(B) After July 19 in District 1, except for the set net only locations, and in District 2, a 24 hour subsistence fishing period will be established by emergency order each weekend during commercial salmon fishing closures;

(C) In Subdistrict 4–A from June 15 through August 1, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(D) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(E) District 5, excluding the Tozitna River drainage and Subdistrict 5–D;

(F) District 6, excluding

(1) the Kantishna River drainage and that portion of the Tanana River

drainage upstream of the mouth of the Salcha River;

(2) subdistrict 6–B, from the downstream end of Crescent Island to three miles upstream of the mouth of the Totchaket Slough, where salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(xxvii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–B, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday;

(C) In Subdistrict 6–A and 6–B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6 p.m. Wednesday until 6 p.m. Friday.

(xxviii) In Subdistrict 6–C and that portion of the Tanana River drainage upstream to the mouth of the Salcha River, salmon may not be taken following the closure of the commercial salmon fishing season from 6 p.m. Monday until 6 p.m. Friday.

(xxix) Adjustments may have to be made to the subsistence salmon fishing seasons and fishing periods to protect healthy populations.

(xxx) Pike may not be taken with gill nets in the waters of the Tolovana River drainage from October 15 through April 14.

(xxxi) An Alaska Commercial Fisheries Entry Commission salmon permit holder registered for the set net only locations may not use drift gill nets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xxxii) Commercial salmon fisherman who is registered for Districts 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(xxxiii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(xxxiv) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season by gill nets larger than six inch mesh after a date specified by emergency order issued between July 10 and July 31.

(xxxv) In Districts 4, 5 and 6, salmon may not be taken for subsistence purposes by drift gill nets, except as follows:

(A) In Subdistrict 4–A, upstream from the mouth of Stink Creek king salmon may be taken by drift gill nets from June 21 through July 14, and chum salmon may be taken by drift gill nets after August 2;

(B) No person may operate a drift gill net that is more than 150 feet in length during the seasons described in this section.

(xxxvi) In Subdistricts 5–A, 5–B, 5–C, and that portion of Subdistrict 5–D downstream from Long Point, no person may possess salmon taken for subsistence purposes during a commercial fishing period, unless the dorsal fin has been immediately removed from the salmon. A person may not sell or purchase salmon from which the dorsal fin has been removed.

(xxxvii) In addition to the subsistence fishing permit conditions, permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gill net or fishwheel. No household may operate more than one fishwheel.

(B) Each person subsistence fishing shall keep accurate daily records of his/her catch, the number of fish taken by species, location and date of the catch, and other information that the Alaska Department of Fish and Game may require for management or conservation purposes.

(C) In that portion of Subdistrict 6–B three miles or more upstream of the mouth of Totchaket Slough, each permittee shall report the number of salmon taken to the Alaska Department of Fish and Game once each week, or as specified on the permit. In the remainder of Subdistrict 6–B and in Subdistrict 6–A, each permittee shall report the total number of salmon taken to the Alaska Department of Fish and Game no later than October 31.

(xxxviii) Subsistence fishermen taking salmon in Subdistrict 6–C shall report their salmon catches at designated Alaska Department of Fish and Game check stations by the end of each weekly fishing period. Immediately after salmon have been taken, catches must be recorded on a harvest form provided by the department.

(xxxix) The annual possession limit for the holder of a Subdistrict 6–C subsistence salmon fishing permit is 10 king salmon and 75 chum salmon for periods through August 15 and 75 chum and coho salmon for periods after August 15.

(xl) Subsistence salmon harvest limits in Subdistrict 6–C are 750 king salmon and 5,000 chum salmon taken through August 15 and 5,200 chum and coho salmon combined taken after August 15. When either the king or chum salmon harvest limit for periods before August 16 has been taken, the subsistence salmon fishing season in Subdistrict 6–C will close. A later season will open after August 15 to allow the taking of the harvest limit for periods after August 15. If the chum salmon harvest limit has not been obtained through August 15, the remaining harvest will not be added to the chum salmon harvest level for periods after August 15.

(xli) Subsistence salmon fishing seasons and weekly fishing periods for Subdistrict 6–C are as follows:

(A) Salmon may be taken at any time except salmon may not be taken for 24 hours before the opening and after the closing of the commercial salmon fishing seasons and during closed weekly commercial salmon fishing periods;

(B) Weekly subsistence salmon fishing periods that follow closures of the commercial salmon fishing seasons will be established by emergency order;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15. Upon request, permits for additional salmon may be issued by the Department.

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods are as specified in 5 Alaska Administrative Code 05.367.

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(F) In Subdistrict 6–B from the downstream end of Crescent Island to a line three miles upstream from the mouth of the Totchaket Slough, the open subsistence salmon fishing periods are from 6 p.m. Friday through 6 p.m. Wednesday.

(4) Kuskokwim Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters on Nunivak Island and within one mile of its shorelines and all waters within the Old Kuskokwim Wildlife Refuge as defined by

boundaries established prior to 1959. In the remainder of the Kuskokwim area Federal subsistence fishing regulations only apply to non-navigable waters on Federal public lands.

(i) Unless otherwise restricted, salmon may be taken in the Kuskokwim area at any time.

(ii) Except as otherwise provided, there is no closed season on fish and other than salmon.

(iii) Salmon may only be taken by gill net, beach seine, or fishwheel subject to the restrictions set forth in this chapter, except that salmon may also be taken by spear in the Holitna River drainage.

(iv) The aggregate length of set gill nets or drift gill nets in use by any individual for taking salmon may not exceed 50 fathoms.

(v) Fish other than salmon may only be taken by set gill net, drift gill net, beach seine, fishwheel, pot, long line, fyke net, dip net, jigging gear, spear, or lead.

(vi) Each subsistence gill net operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(vii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(viii) Only those residents domiciled in the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB, may take salmon for subsistence purposes in the Kuskokwim Area.

(ix) Only those residents domiciled in the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak may take for subsistence purposes Pacific cod in the Kuskokwim area.

(x) Only those residents domiciled within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island may take for subsistence purposes herring and herring roe in those locations.

(xi) A gill net may obstruct not more than one-half the width of any fish stream. A stationary fishing device may obstruct not more than one-half the width of any salmon stream.

(xii) Kegs or buoys attached to subsistence gill nets may be any color except red during any open weekly commercial salmon fishing period.

(xiii) The maximum depth of gill nets is as follows:

(A) Gill nets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gill nets with greater than six-inch mesh may not be more than 35 meshes in depth;

(xiv) In addition to the previously stated requirements,

(A) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river;

(B) For all gill nets and unattended gear that are fished under the ice, the first initial, last name, and address of the operator must be plainly and legibly inscribed on a stake inserted in the ice and attached to the gear.

(xv) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakof River, no part of a set gill net located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gill net.

(xvi) The Goodnews River is closed to the subsistence taking of fish by nets east of a line between Alaska Department of Fish and Game regulatory markers placed near the mouth of the Ufigag River and Alaska Department of Fish and Game regulatory marker placed near the mouth of the Tunulik River 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xvii) The Kanektok River is closed to the subsistence taking of fish by nets up stream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during and six hours after each open commercial salmon fishing period.

(xviii) The Arolik River is closed to the subsistence taking of fish by the nets upstream of Alaska Department of Fish and Game regulatory markers placed near the mouth 24 hours before, during, and six hours after each open commercial salmon fishing period.

(xix) In District 1 and in those waters of the Koskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may be taken at any time except salmon may not be taken for 16 hours before, during and for six hours after, each open commercial salmon fishing period for District 1.

(xx) In District 1, Kuskokuak Slough only, salmon may be taken at any time except:

(A) From June 1 through July 31, salmon may not be taken for 24 hours before and during each open commercial salmon fishing period in the district.

(B) From August 1 through August 31, salmon may not be taken for 15 hours before and during each open commercial salmon fishing period in the district.

(xxi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, salmon may be taken at any time, except that from June 1 through September 8 salmon may not be taken for 24 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(xxii) In Districts 4 and 5, salmon may be taken at any time except from June 1 through September 8, salmon may not be taken for 24 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(5) Bristol Bay Area. At this time the Federal Government is only exerting its control on subsistence fishing in non-navigable fresh waters on Federal public lands.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Bristol Bay Area.

(ii) Within the waters of a district open during the commercial salmon fishing season, salmon may be taken only during open commercial salmon fishing periods.

(iii) The total annual possession limit for a subsistence salmon fishing permit issued under this section is 200 sockeye salmon.

(iv) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(v) Only one subsistence fishing permit may be issued to each household per year.

(vi) No set gill net may obstruct more than one-half the width of a stream.

(vii) Each set gill net must be staked and buoyed.

(viii) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(ix) Fish, other than salmon, herring and capelin may be taken by gear previously listed unless restricted under the terms of a subsistence fishing permit.

(x) Within any district, salmon, herring, and capelin may only be taken by drift and set gill nets.

(xi) Outside the boundaries of any district, salmon may only be taken by set gill net, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(xii) The maximum lengths for set gill nets used to take salmon are as follows:

(A) In the Naknek, Egegik and Ugashik Rivers, in the Nushagak District, and in Naknek Lake, set gill nets may not exceed 10 fathoms in length;

(B) In the remaining waters of the area, set gill nets may not exceed 25 fathoms in length.

(xiii) In the Naknek, Egegik, and Ugashik Rivers from 9 a.m. June 23 through 9 a.m. July 17, salmon may be taken only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday.

(xiv) Except for the western shore of the Newhalen River, waters used by salmon are closed to the subsistence taking of fish within 300 feet of a stream mouth.

(xv) Nushagak District:

(A) In the open waters of the Nushagak District, provision shall be made for subsistence salmon fishing by emergency order whenever there are commercial salmon fishing closures of five or more days. During these emergency order openings,

(*1*) Set gill nets may not be more than 10 fathoms in length;

(*2*) No set gill net may be set or operated within 450 feet of another set gill net, and

(*3*) Catches during the emergency order openings must be reported to the Dillingham Alaska Department of Fish and Game office within 24 hours after the closure.

(B) In the Nushagak District from an Alaska Department of Fish and Game regulatory marker located two statute miles south of Bradford Point to an Alaska Department of Fish and Game regulatory marker located at Red Bluff on the west shore of the Wood River, from 9 a.m. June 16 through 9 a.m. July 17, salmon may be taken only from 9 a.m. Monday to 9 a.m. Tuesday, 9 a.m. Wednesday to 9 a.m. Thursday, and 9 a.m. Friday to 9 a.m. Saturday.

(C) Only those residents domiciled in the Nushagak District and freshwater drainage flowing into the district may take salmon in the district and those drainage.

(xvi) Naknek-Kvichak District:

(A) From October 1 through December 31, sockeye salmon may be taken along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by Alaska Department of Fish and Game regulatory markers.

(B) Subsistence salmon fishing permits for the Naknek River drainage will be issued only through the Alaska Department of Fish and Game King Salmon office.

(C) Only those residents domiciled in the Naknek and Kvichak River drainage may take salmon in the Naknek River drainage.

(D) Only those residents domiciled in the Iliamna-Lake Clark drainage may take salmon in the Iliamna-Lake Clark drainage.

(E) Subsistence fishing with nets is prohibited in the following waters and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14: Lower Talarik Creek, Roadhouse Creek, Nick G. Creek, Middle Talarik Creek, Alexi Creek, Cooper River, Upper Talarik Creek, Tazimina River, Kakhonak River, Pete Andrew Creek, Young's Creek, Gibralter River, Zacker Creek, Chekok Creek, Dennis Creek, Newhalen River, Tomokok Creek, Belinda Creek.

(xvii) Togiak District:

(A) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River Section and the Togiak River drainage unless the head has been immediately removed from the salmon. It is unlawful to purchase or sell coho salmon from which the head has been removed.

(B) Only those residents domiciled in the Togiak District, freshwater drainage flowing into the district, and the community of Manokotak may take salmon and freshwater fish species in the district and those drainages.

(C) Gill nets are prohibited in that portion of the Naknek River upstream from Sovonaski;

(6) Aleutian Islands Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters on Federal public lands west of the easternmost tip of Ugamak Island to the terminus of the Aleutian Islands, except the area between Akutan Pass and Samalga Island. In the remainder of the Aleutian Island area Federal subsistence fishing regulations only apply to non-navigable waters on Federal public lands.

(i) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(ii) Fish other than salmon may be taken by gear previously, unless restricted under the terms of a subsistence fishing permit.

(iii) The waters of Unalaska Lake (at Unalaska Village), its drainage and the outlet stream, and within 500 yards of its terminus are closed to subsistence fishing.

(iv) The Adak District is closed to the taking of salmon.

(v) Salmon, trout and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts. Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(7) Alaska Peninsula Area. Federal Subsistence regulations for the subsistence harvest of fish are in effect for all waters on and within one-mile of Simeonof Island. In the remainder of the Alaska Peninsula Area Federal subsistence fishing regulations only apply to non-navigable waters on Federal public lands.

(i) Salmon may be taken at any time expect within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50 mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(ii) Fish other than salmon may be taken at any time unless restricted under the terms of a subsistence fishing permit.

(iii) Salmon may be taken by seine and gill net, or with gear specified on a subsistence fishing permit.

(iv) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(v) No set gill net may exceed 100 fathoms in length.

(vi) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(C) Inshore of a line from the Pacific Pearl dock to Black Point, including the inlet and Humboldt Creek.

(vii) Salmon, trout and char may be taken only under the authority of a subsistence fishing permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(8) Chignik Area. Federal subsistence regulations for the subsistence harvest of fish are in effect for all waters on and within one mile of each of the Semidi Islands. In the remainder of the Chignik Area Federal regulations only apply to

non-navigable waters on Federal public lands.

(i) Salmon may be taken by seine and gill nets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, salmon may not be taken with purse seines.

(ii) Fish other than salmon may be taken by gear previously listed, unless restricted under the terms of a subsistence fishing permit.

(iii) Salmon may not be taken in the Chignik River, upstream from the Alaska Department of Fish and Game weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iv) Salmon, trout and char may be taken only under the authority of a subsistence permit. A record of subsistence caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game no later than October 31.

(v) From June 10 through September 30, commercial fishing license holders may not substitute fish for salmon.

(9) Kodiak Area. (i) At this time, the Federal Government is only exerting its control over subsistence fishing in the following waters:

(A) All fresh waters within the boundary of the Kodiak National Wildlife Refuge and all non-navigable waters on Federal public lands on Kodiak and surrounding islands.

(B) All saltwater enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line one-half mile on either side of the mouth of Karluk River, and extending seaward 3000 feet. The mouth of the river is closed to fishing.

(C) All saltwater enclosed by the boundaries of the shoreline of Afognak Island and a line 1500 feet seaward of the shoreline.

(D) All navigable and non-navigable fresh waters on Afognak Island enclosed by the National Wildlife Refuge Boundaries.

(ii) Samon may be taken for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gill nets and no other type of salmon gear may be on board the vessel;

(iii) Fish other than salmon may be taken at any time unless restricted by the terms of a subsistence fishing permit.

(iv) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear previously listed.

(v) Salmon may be taken only by gill net and seine.

(vi) Subsistence fishermem must be physically present at the net at all times the net is being fished.

(vii) The following locations are closed to the subsistence taking of salmon:

(A) All waters of Mill Bay and all those waters bounded by a line from Spruce Cape to the northernmost point of Woody Island, then to the northernmost point of Holiday Island, then to a point on Near Island opposite the Kodiak small boat harbor entrance and then to the small boat harbor entrance;

(B) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(C) All water closed to commercial salmon fishing in the Barbara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Las Point to the tip of River Mouth Point of Afognak Bay;

(D) All waters 300 yards seaward of the terminus of Monks Creek;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island;

(G) All waters of Ouzinkie Harbor north of a line from 57°55'10" N. lat., 152°36'W. long. to 57°55'03" N. lat., 152°29'20" long.

(viii) A subsistence fishing permit is required for taking salmon, trout and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from May 1 through June 30. All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence caught fish and must be returned to the local representative of the Alaska Department of Fish and Game by February 1 of the year following the year the permit was issued.

(ix) Only those residents domiciled in the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base, may take salmon in the Kodiak Area. This restriction does not apply to the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58° 52' North latitude) mid-stream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11'22" North latitude, 156°20'30" West longitude).

(10) Cook Inlet Area. (i) At this time, the Federal Government is only exerting its control over subsistence fishing in the following waters:

(A) All waters within the boundaries of the Kenai National Wildlife Refuge.

(B) All non-navigable waters on Federal public lands within the Cook Inlet Area.

(ii) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Cook Inlet area.

(iii) Unless otherwise restricted or under the terms of a subsistence fishing permit, fish may be taken by listed gear.

(iv) All salt water is closed to the taking of finfish except:

(A) The Tyonek and Port Graham Subdistricts;

(B) Salmon may be taken in the Koyuktolik Subdistrict.

(v) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(vi) Bottomfish may be taken by legal gear for commercial bottomfish in the area.

(vii) Smelt and herring may be taken only with gill nets and dip nets. Gill nets used to take smelt may not exceed 50 feet in length and two inches in mesh size.

(viii) Whitefish may be taken only in the Tyonek River drainage and only under the authority of a permit issued by the department.

(ix) Gill nets may not be used in fresh water, except for the taking of whitefish in the Tyonek River drainage.

(x) Trout, grayling, char, and burbot may not be taken in fresh water, except that dolly varden may be taken in fresh water in the Port Graham Subdistrict.

(xi) Dolly varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by the department; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily dolly varden catches on forms provided by the department.

(xii) Dolly varden may be taken in fresh water for subsistence purposes in

the Port Graham Subdistrict only from April 1 through May 31.

(xiii) Only those residents domiciled in Port Graham and English Bay may take salmon in the Port Graham and Koyuktolik Subdistricts and dolly varden in fresh water in the Port Graham Subdistrict.

(xiv) Dolly varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(xv) Salmon may be taken only under the authority of a subsistence fishing permit issued by the Alaska Department of Fish and Game; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by the department.

(xvi) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(xvii) Only those residents domiciled in the village of Tyonek may take salmon in the Tyonek Subdistrict.

(xviii) Salmon may be taken only as follows:

(A) In the Tyonek subdistrict by set gill nets not exceeding 10 fathoms in length, six inches in mesh size and 45 meshes in depth;

(B) In the Port Graham and Koyuktolik Subdistricts by set gill nets not exceeding 35 fathoms in length, six inches in mesh size and 45 meshes in depth;

(C) No part of a set gill net may be set or operated within 600 feet of any part of another set gill net.

(xix) Salmon may be taken for subsistence purposes only as follows:

(A) In the Tyonek subdistrict;

(*1*) from May 15 through June 15 from 4 a.m. to 8 p.m. on Tuesdays, Thursdays and Fridays (this season shall close by emergency order when 4,200 king salmon are taken);

(*2*) from June 16 through October 15 from 6 a.m. to 6 p.m. on Saturdays (shall not open until July 1 if 4,200 king salmon are taken before June 16).

(B) In the Port Graham and Koyuktolik Subdistricts from April 1 through September 30 from 6 a.m. Monday until 6 a.m. Wednesday and from 6 a.m. Thursday until 6 a.m. Saturday.

(xx) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xxi) It is unlawful to purchase or sell salmon from which both lobes of the caudal fin (tail) have been removed.

(xxii) The total annual possession limit for each subsistence salmon permit is as follows:

(A) There is no total annual possession limit for holders of Port Graham and Koyuktolik Subdistrict subsistence salmon fishing permits;

(B) 25 salmon for the head of household and 10 salmon for each dependent of the permit holder.

(C) In addition to the limits in (b) of this subsection; the holder of a Tyonek subdistrict subsistence salmon fishing permit may take 70 king salmon; no more than 4,200 king salmon may be taken in the Tyonek subdistrict during the period May 15 through June 30.

(11) Prince William Sound Area. At this time Federal subsistence fishing regulations only apply to non-navigable waters on Federal public lands in the Prince William Sound area.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Prince William Sound Area.

(ii) Fish may be taken by gear previously listed unless restricted in this section or under the term of a subsistence fishing permit.

(iii) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fishwheels or dip nets;

(B) The Chitina Subdistrict is closed to subsistence salmon fishing;

(iv) Fishwheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fishwheels must be removed from the water at the end of the permit period. Each permittee may operate only one fishwheel at any one time. No person may set or operate a fishwheel within 75 feet of another fishwheel. No fishwheel may have more than two baskets.

(v) The permit holder must personally operate the fishwheel or dip net. A subsistence fishwheel or dip net permit may not be loaned or transferred except as permitted by Alaska regulations.

(vi) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fishwheel so that the name and address are plainly visible.

(vii) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes with a subsistence fishing permit.

(viii) Salmon and freshwater fish species may be taken only under the authority of a subsistence fishing permit.

(ix) Only one subsistence fishing permit will be issued to each household per year.

(x) Salmon may not be taken in any area closed to commercial salmon fishing unless otherwise permitted.

(xi) In locations open to commercial salmon fishing and in conformance with commercial salmon fishing regulations, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household over two;

(D) No more than five king salmon may be taken per permit.

(xii) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(xiii) A subsistence salmon fishing permit for the Upper Copper River District will be issued only to residents of the State of Alaska. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned to the Alaska Department of Fish and Game no later than October 31, or a permit for the following year may be denied.

(D) During closed fishing periods, the Alaska Department of Fish and Game's Chitina permit issuing station may be closed or operated at reduced hours to reduce costs.

(E) A household may not be issued both a Copper River Subsistence Salmon Fishing Permit and a Chitina Subdistrict Personal Use Salmon Fishing Permit.

(xiv) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) 30 salmon for a household with one person;

(B) 60 salmon for a household with two persons;

(C) 10 salmon for each additional person in a household over two;

(D) Upon request, permits for additional salmon will be issued with the following limits:

(*1*) No more than a total of 200 salmon for a permit issued to a household with one person.

(*2*) No more than a total of 500 salmon for a permit issued to a household with two or more persons.

(xv) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) The Chitina subdistrict is closed to subsistence salmon fishing;

(C) When the Copper River subsistence fishery is closed or restricted because of an inadequate escapement of sockeye or chinook salmon, the fishery may be reopened September 1 for the taking of coho salmon, which constitute the majority of the salmon at that time.

(D) No person may possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless the dorsal fin has been immediately removed from the salmon.

(xvi) Salmon may not be taken in the Chitina Subdistrict, or in any portion of the subdistrict, when those waters are closed to subsistence salmon fishing.

(xvii) Crosswind Lake is closed to all subsistence fishing.

(xviii) Subsistence salmon fishing permits for the Southwestern District and Green Island may be issued only to those residents domiciled in the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield and all waters surrounding Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in the Southwestern District, as described in above, and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, except that pink salmon may be taken in fresh waters by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Chenega Bay village.

(xix) Salmon, other than chinook salmon, may be taken in the vicinity of the former native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only in those waters of the Copper River between Alaska Department of Fish and Game regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between Alaska Department of Fish and Game regulatory markers identifying the open waters of the creek;

(B) Fishwheels and dipnets only may be used on the Copper River; dipnets and spears only may be used in Tanada Creek;

(C) Salmon may be taken only from June 1 through September 1 or until the season is closed by emergency order; fishing periods are to be established by emergency order and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(D) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a live box or be monitored at all times;

(E) The permit must be returned to the Alaska Department of Fish and Game's Glennallen office no later than September 30 of each year.

(xx) Subsistence salmon fishing permits for those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, may be issued only to those residents domiciled in the villages of Tatitlek and Ellamar. Salmon may be taken for subsistence purposes in those waters only as follows:

(A) Salmon may be taken only in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point;

(B) Salmon may be taken only by gill nets up to 150 fathoms in length, with a maximum mesh size of 6.25 inches, except that pink salmon may be taken in fresh water by dipnets only;

(C) Salmon may be taken only from May 15 through September 30;

(D) Fishing periods are from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(E) No fishing is allowed within the closed waters areas for commercial salmon fisheries; only pink salmon may be taken in fresh water;

(F) There are no bag and possession limits for this fishery;

(G) Permits may be issued only at Tatitlek village.

(12) Yakutat Area. At this time, the Federal Government is only exerting its control over subsistence fishing in the following waters: all waters within the boundaries of Glacier Bay National Preserve; and, all non-navigable waters on Federal public lands in the Yakutat area, with the exception of such waters within Glacier Bay National Park, which is closed to subsistence uses.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat area.

(ii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) Only those residents domiciled east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island may take;

(A) Salmon in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to the Tsiu River, in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape, and in waters of Icy Bay inside a line from the westernmost tip of Point Riou to Icy Cape Light;

(B) Dolly varden char, steelhead trout, and smelt in freshwater upstream from the terminus of streams and rivers of the Yakutat area from the Doame River to Point Manby, and in waters of Yakutat Bay and Russell Fiord inside a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

(v) Fish may be taken by gear previously listed, unless restricted in this section or under the terms of a subsistence fishing permit.

(vi) Salmon, trout and char may be taken only under authority of a subsistence fishing permit.

(vii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(viii) Subsistence fishermen must remove the dorsal fin from subsistence caught salmon when taken.

(13) Southeastern Alaska Area. At this time Federal subsistence fishing regulations only apply to non-navigable waters on Federal public lands in the Southeastern Alaska Area, with the exception of Glacier Bay National Park which is closed to the subsistence uses.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, fish may be taken in the Southeastern Alaska Area at any time.

(ii) Salmon, trout, char and herring spawn on kelp may be taken only under authority of a subsistence fishing permit.

(iii) No person may possess subsistence-taken and sport-taken salmon on the same day.

(iv) The Alaska Department of Fish and Game shall not issue a permit for the taking of steelhead trout, but steelhead trout taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any steelhead trout taken in this manner on his or her permit calendar.

(v) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(vi) Subsistence fishermen shall immediately remove the dorsal fin of all salmon when taken.

(vii) Coho salmon may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(viii) Fish may be taken by gear previously listed except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gillnet or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Set gill nets may not be used to take salmon except in the mainstream and side channels, but not the tributaries, of the Chilkat River from the terminus to one mile upstream of Wells Bridge;

(C) Beach seines and gaffs only may be used to take coho salmon during the season and including coho salmon which may be taken from Salt Lake and Mitchell Bay from August 1 through October 31.

(ix) The following waters are closed to subsistence salmon fishing: in District 15, saltwaters of Lynn Canal including Chilkat, Chilkoot and Lutak Inlets, during the closed period of the commercial salmon net fishery in the district, except that salmon may be taken in saltwaters of Lutak Inlet on the Saturday before any period that the commercial salmon net fishery is open in the inlet to the terminus of the Chilkoot River.

(x) Permits will not be issued for taking chinook or coho salmon, except for coho salmon as provided in Salt Lake and Mitchell Bay from August 1 through October 31, but chinook or coho salmon taken incidentally by gear operated under the terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report any chinook or coho salmon taken in this manner on his or her permit calendar.

(xi) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(xii) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(xiii) Before July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay only by residents of Angoon. On and after July 4, subsistence salmon fishing permits may be operated in Sitkoh Bay by residents of both Angoon and Sitka.

(xiv) Subsistence salmon fishing permits for the fishery provided for Salt Lake and Mitchell Bay will be issued only to those persons domiciled in Angoon and only one permit will be issued for a household. The number of coho salmon that may be taken on a permit will be specified by the Alaska Department of Fish and Game after it has assessed the level of effort that will be involved in that fishery.

(xv) In the waters of the Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

(xvi) Finfish may be taken for subsistence purposes only as provided in this section.

(A) Klukwan: Only those residents domiciled west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River may take herring, herring spawn, and bottomfish in waters of Section 15–A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding the waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(B) Haines: Only those residents domiciled in the City and Borough of Haines, excuding residents domiciled in the village of Klukwan and in the drainage of Excursion Inlet, may take herring, herring spawn, and bottomfish in waters of Section 15–A; and salmon and smelt in all waters of the Chilkat River and Chilkat Inlet north of the latitude of Glacier Point, and in the Chilkoot River, Lutak Inlet, and Chilkoot Inlet north of the latitude of Battery Point, excluding waters of Taiya Inlet north of the latitude of the tip of Taiya Point.

(C) Hoonah: Only those residents domiciled in the City of Hoonah and in Chichagof Island drainage on the eastern shore of Port Frederick from Gartina Creek to Point Sophia may take herring, herring spawn, and bottomfish in waters of District 14 east of the longitude of Point Dundas; and salmon, smelt, and dolly varden char in waters of section 14–B and 14–C, in District 13 in waters along the western shore of Yakobi Island east of a line from Cape Spencer Light to Surge Bay Light, and in District 12 in waters of Basket Bay inside a line from 57°39'50" N. lat., 134°53'12" W. long. to 57°39'17" N. lat., 134°53'53" W. long.

(D) Angoon: Only those residents domiciled in the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island, may take herring, herring spawn, and bottomfish in waters of District 12 between the latitude of Parker Point and the latitude of Point Caution, and in Section 13–C east of the longitude of Point Elizabeth; and salmon and dolly varden char in waters of District 12 south of a line from Fishery Point to South Passage Point and north of the latitude of Point Caution and in waters of Section 13–C east of the longitude of Point Elizabeth.

(E) Sitka: Only those residents of the City and Borough of Sitka domiciled in drainage which empty into Section 13–B north of the latitude of Dorothy Narrows, except those domiciled in the U.S. Coast Guard base on Japonski Island, may take herring and herring spawn in waters of Section 13–B north of the latitude of Aspid Cape; and sockeye salmon in waters of Section 13–A south of the latitude of Cape Edward, in waters of Section 13–B north of the

latitude of Redfish Cape, and in waters of Section 13–C.

(F) Kake: Only those residents domiciled in the City of Kake and in Kupreanof Island drainage into Keku Strait south of Point White and north of the Portage Bay boat harbor may take herring, herring spawn, and bottomfish in waters of Section 9–B north of the latitude of Point Ellis, in waters of District 10 west of a line from Pinta Point to Point Pybus, and in waters of District 5 north of 56°40′ N. lat.; and salmon and dolly varden char in Sections 9–A and 9–B in waters north of the latitude of Swain Point, in waters of District 10 west of a line from Pinta Point to False Point Pybus, and in waters of District 5 north of a line from Point Barrie to Boulder Point.

(G) Saxman: Only those residents domiciled in the City of Saxman may take herring and herring spawn in waters of Section 1–F between Point Sykes and Foggy Point to a distance of 2 nautical miles from shore; bottomfish in waters of Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra, and in waters of Section 1–E south of the latitude of Grant Island light; and salmon and dolly varden char in waters of Section 1–C in Checats Cove east of the longitude of Edith Point, in waters of Section 1–D in Yes Bay north of a line from Syble Point to Bluff Point, in Section 1–E in waters of Helm Bay north of the latitude of Helm Point and in waters of the Naha River and Roosevelt Lagoon, and in Section 1–F in waters of George Inlet north of 55° 26′ N. lat. and in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.

(H) Kasaan: Only those residents domiciled in the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20′ W. long. and east of 132° 25′ W. long. may take herring and herring spawn in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula, and in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133° 20′ W. long.; and salmon, dolly varden char, and bottomfish in waters of District 2 north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula.

(I) Klawock: Only those residents domiciled in the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989 may take herring spawn in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133° 20′ W. long., and in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3–B; and salmon, dolly varden char, and steelhead trout in Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point on Hecata Island at 55° 44′ N. lat., 133° 25′ W. long. to Bay Point, and in Section 3–C in waters of Karheen Passage north of 55° 48′ N. lat. and east of 133° 20′ W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(J) Craig: Only those residents domiciled in the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989 may take herring and herring spawn in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133° 20′ W. long., and in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point; bottomfish in waters of Section 3–B; and salmon, dolly varden char, and steelhead trout in Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point and in waters of Warm Chuck Inlet north of a line from a point on Hecata Island at 55° 44′ N. lat., 133° 25′ W. long. to Bay Point, and in Section 3–C in waters of Karheen Passage north of 55° 48′ N. lat. and east of 133° 20′ W. long. and in waters of Sarkar Cove and Sarkar Lakes.

(K) Hydaburg: Only those residents domiciled in the townsite of Hydaburg may take herring and herring spawn in waters of Section 3–A in Tlevak Strait north of the latitude of High Point and south of the latitude of Eolus Point, and in waters of Section 3–B in San Alberta Bay north of the latitude of the southernmost tip of Cape Suspiro and east of 133° 20′ W. long.; bottomfish in waters of Section 3–A, and in waters of Section 3–B south of the latitude of Bocas Point, excluding Port Refugio; and salmon and dolly varden char in waters of Section 3–A and in waters of District 2 in Nichols Bay north of 54° 42′ 07″ N. lat.

§ _____.25 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of dungenous crab, king crab, tanner crab, shrimp, clams, abalone, and other types of shellfish or their parts on Federal public lands in Alaska. These regulations apply to: (1) Non-navigable waters on Federal public lands, except in Glacier Bay National Park where all waters are closed to subsistence harvest, and (2) navigable waters in those cases where Federal title and/or jurisdiction is specifically identified herein.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section or the preceding subsistence fishing section.

(c) Methods, Means, and General Restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing:

(i) Gear specified under subsistence fishing regulations.

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bering Sea area.

(6) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirements.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in (6) of this subsection, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in subsection (f) of this Section.

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence Take by Commercial Vessels—No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered.

(e) Unlawful Possession of Subsistence Shellfish—No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder.

(f) Subsistence Shellfish Areas and Pertinent Restrictions. (1) Southeastern Alaska-Yakutat Area. At this time the Federal Government is only exerting its control over the waters of Glacier Bay National Park in the Southeastern Alaska-Yakutat Area. Glacier Bay National Park is closed to subsistence uses.

(2) Prince William Sound Area. At this time there are no locations within this area on which the Federal Government is regulating the subsistence harvest of shellfish. All shellfish harvest in this area is therefore under the regulation of the State of Alaska.

(3) Cook Inlet Area. At this time the Federal Government is only exerting its control over the subsistence harvest of shellfish in the following waters in the Cook Inlet Area: all waters within the boundaries of the Kenai National Wildlife Refuge. This area is closed to the taking of shellfish for subsistence purposes.

(4) Kodiak Area. (i) At this time, the Federal Government is only exerting its control over the subsistence harvest of shellfish in the following waters in the Kodiak area:

(A) All saltwater enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line one-half mile on either side of the mouth of Karluk River, and extending seaward 3000 feet. The mouth of the river is closed to fishing.

(B) All saltwater enclosed by the boundaries of the shoreline of Afognak Island and a line 1500 feet seaward of the shoreline.

(C) All navigable and non-navigable fresh waters on Afognak Island enclosed by the National Wildlife Refuge Boundaries.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than five crab pots may be used to take king crab;

(D) King crab may be taken only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location.

(E) Only those residents domiciled in the Kodiak Island Borough may take king crab in the Kodiak Area. This restriction does not apply to the Semidi Island, the North Mainland, and the South Mainland Sections.

(vi) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15 through February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth, unless the commercial tanner crab fishing season is open in the location.

(C) The daily bag and possession limit is 12 crab per person and only male crab may be taken.

(5) Alaska Peninsula-Aleutian Islands Area. (i) At this time the Federal Government is only exerting its control over the subsistence harvest of shellfish found in all waters within one-mile of Simeonof Island and the waters west of the easternmost tip of Ugamak Island to the terminus of the Aleutian Islands, except the area between Akutan Pass and Samalga Island.

(ii) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) The daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(v) In the subsistence taking of king crab:

(A) The daily bag and possession limit is six crab per person and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1 through January 31.

(vi) The daily bag and possession limit is 12 tanner crab per person. Only male crab may be taken.

(6) Bering Sea Area. (i) At this time the Federal Government is only exerting its control over the subsistence harvest of shellfish waters within Nunivak Islands shoreline to a distance one mile offshore, and waters within the Old Kuskokwim Wildlife Refuge as defined by boundaries established prior to 1959.

(ii) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit.

(iii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jiggling gear, pots and ring net.

(iv) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the Alaska Department of Fish and Game prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(v) In waters south of 60° North latitude, the daily bag and possession limit is 12 dungeness crab per person. Only male dungeness crab may be taken.

(vi) In subsistence taking of king crab:

(A) In waters south of 60° North Latitude, the daily bag and possession limit is six crab per person, and only male crab may be taken;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In the Norton Sound Section of the Northern District, a subsistence fishing permit is required and may be obtained from a local representative of the Alaska Department of Fish and Game;

(D) In waters south of 60° North latitude, crab may be taken only from June 1 through January 31.

(vii) In waters south of 60° North latitude, the daily bag and possession limit is 12 tanner crab, and only males may be taken.

John F. Turner,

Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

Regional Forester, USDA—Forest Service.

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December 9, 1991

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act; Section 10 Escrow Account Statements; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-91-1558; FR-2955-P-02]

RIN 2502-AF24

Real Estate Settlement Procedures Act; Regulation X; Section 10 Escrow Account Statements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would codify the requirements for initial escrow account statements and annual escrow account statements under section 10(b), (c) and (d) of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2609(b), (c) and (d) as set forth in section 942 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act).

DATES: Comment due date: February 3, 1992.

ADDRESSES: Comments on proposed rule: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

All comments should reference the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, room 9284, (202) 708-4560 (for non-legal questions, including complaints and requests for documents); or Grant E. Mitchell or John B. Shumway (for legal questions), Office of General Counsel, room 10252, (202) 708-1550, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned OMB control number 2502-0457. The public reporting burden for each of these collections of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document. OMB has requested specific comments on the paperwork burden of this rule, as the total annual paperwork burden approaches $100,000,000 according to the current estimate. In particular, any suggestions for reducing this burden, including combining the information required by this rule with other, similar information required by other statutes or regulations is requested. While the Department currently does not consider this to be a "major rule" as contemplated by section 1(b) of the Executive Order on Regulation issued by the President on February 17, 1991, it has determined that it will complete a Regulatory Impact Analysis after the receipt of comments on the paperwork burden in conjunction with the issuance of a final rule. Send paperwork burden reduction comments to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention, Desk Officer for HUD.

Background

Section 942 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (the Act) added new sections 10(b), (c) and (d) to RESPA, which required, *inter alia*, that HUD issue regulations within 90 days amending its uniform settlement statement. The Department issued a notice establishing initial escrow account statement requirements and setting forth the permissible changes to the HUD-1 on April 1, 1991 (56 FR 13384).

General

If the lender establishes an escrow account at the time of initial funding of the mortgage loan, either as a requirement for the loan or voluntarily for the borrower, the initial statement will be a loan closing document. The document may be separate or an addendum to or part of the uniform settlement statement (HUD-1). If a lender or servicer establishes an escrow account after closing, the initial statement must be submitted to the borrower within 45 calendar days from the establishment of the escrow account. This rule also sets forth the requirements for the annual escrow account statement as set out in section 10(c)(2) of RESPA.

For an initial escrow account statement, escrow accounts established after April 1, 1991 are covered by this rule, as set forth in a notice published in the **Federal Register** on April 1, 1991 (56 FR 13384). For annual escrow account statements, this rule applies to any required or voluntary escrow account established in connection with a federally-related mortgage loan (as defined in section 3(1) of RESPA), whether created before or after the effective date of RESPA (December 22, 1971).

HUD is proposing to expand coverage from that set forth in the notice published on April 1, 1991. For purposes of this rule, the Secretary intends not to apply the requirement of § 3500.5(b)(1) that legal title must pass, and to terminate the exemption of § 3500.5(d)(2) for refinancings. Any refinancing which meets all of the other criteria of section 3(1) of RESPA would be covered by the provisions of this regulation, after its effective date. Any first mortgage loan that qualifies under section 3 of RESPA, including one which pays off an existing mortgage loan, or is newly created on a property which has no liens, is proposed to be covered by the requirement for an initial escrow account statement and an annual escrow account statement. Such loans would include reverse mortgages, if the reverse mortgage lender requires or voluntarily establishes an escrow account as part of the system of withholding for property charges. HUD's Home Equity Conversion Mortgage Insurance Program (§ 206.203 of this title) does not establish a covered escrow account. Home equity loans or lines of credit would not be covered by § 3500.17 unless a new first lien is created, and the lender requires or agrees that an escrow account be established. If no escrow accounts are established or continued relating to a federally-related mortgage loan, this rule has no applicability.

The Department will not seek penalties as provided in section 10(d) of RESPA for any action or failure to take action by a lender or servicer which takes place before the effective date of a final rule.

The HUD-1 is used by the settlement agent, the person responsible for completing the settlement, to reflect charges paid in connection with the settlement by the buyer and seller, for any residential real estate transaction

involving a federally-related mortgage loan. A federally-related mortgage loan includes most one- to four-family residential mortgage loans involving a first lien in the United States. In different jurisdictions a settlement is called a "closing" and a settlement agent is called a "closing agent." "Closing in escrow" is a common term in several states, and also describes the process leading to transfer of title to or refinancing a loan on residential property. "Closing" and "settlement" are used interchangeably in the preamble and in the rule.

Section 3500.8(d) created limited administrative exemptions from the use of the HUD–1 for otherwise covered federally-related mortgage loans. Even if the settlement agent chooses not to use the HUD–1 based on a § 3500.8(d) exemption, the format set forth for the initial escrow account statement in § 3500.17 must be used.

This rule defines relevant terms (§ 3500.17(a)), sets forth the approved format for an initial escrow account statement (§ 3500.17(c)), establishes the general information needed in an annual escrow account statement (§ 3500.17(d)), sets forth recordkeeping requirements (§ 3500.17(g)), and establishes the manner in which penalties will be assessed and collected (§ 3500.17.(h)).

Other Matters

Regulatory Flexibility Act

Under 5 U.S.C. § 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. HUD finds that there are no anti-competitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities. In any event, by statute, the requirements of this rule must be uniformly adhered to by all lenders and servicers.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with part 50 of this title, which implements section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332). The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Paperwork

The estimated paperwork burden hours associated with this rule are as follows:

	Initial statement	Annual statement	Total
Number of respondents	20,000	10,000*	20,000.
Frequency of response	1×2.7 million	Annually	
Annual responses	2.7 million	30 million	32.7 million.
Burden per response	0.2 hour	0.25 hour	
Recordkeeping burden		84,000	84,000.
Annual burden hours	540,000 hours**	7,584,000 hours**	8,124,000 hours.
Annual cost	$5.4 million	$90.8 million	$96.2 million.***

*These 10,000 are included in the 20,000 loan originators.
**Hourly pay estimated at $10.00.
***Includes $0.50 per loan for postage, copying and miscellaneous costs.

Regulatory Impact Analysis

The rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule does not change the existing relationship between HUD, the states and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule implements Congressional mandates and does not involve any exercise of administrative discretion. Its provisions will have a minimal effect on the family.

Agenda of Regulations

This rule was listed as item 1396 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53406) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3500

Condominiums, Consumer protection, Escrow accounts, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 3500 is proposed to be amended as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for 24 CFR part 3500 would be revised to read as follows:

Authority: Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533 (12 U.S.C. 2601 *et seq.*).

2. A new § 3500.17 would be added, to read as follows:

§ 3500.17 Escrow account statements.

(a) *Definitions.* As used in this section:

(1) *Annual escrow account statement* means a statement containing all of the information set forth in § 3500.17(d), and which must be submitted to the borrower not more than 30 calendar days after the conclusion of the escrow account computation year. An escrow account computation year is any escrow account year whose date of establishment begins on or after January 1, 1991.

(2) *Delivery* means placing a document in the United States mail, first

class postage paid, addressed to the last known address of the recipient. Delivery may also be made by hand to a recipient directly, if a signed acknowledgement of receipt from the recipient is obtained, as set forth in § 3550.17(a)(9).

(3) An *escrow account* means any account which is established for the purpose of making payments of taxes, insurance premiums, or other charges with respect to a federally-related mortgage loan, including charges which the lender/servicer has voluntarily agreed to collect. The definition encompasses any account established for the described purpose, although it may be called a "reserve account", "impound account", or other term in different localities. An "escrow account" also includes any arrangement where excess payments are deducted from principal and subsequently re-added to principal when charges similar to those in escrow accounts are paid by the servicer.

(4) *Federally-related mortgage loan* has the meaning set forth in section 3(1) of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.* Regulation X (24 CFR part 3500) created a requirement under § 3500.5(b)(1), that legal title must pass, and, in § 3500.5(d)(3), created a limited exemption for refinancings. For purposes of this part, the Secretary has withdrawn the requirement that legal title must pass as well as the exemption for refinancing of existing mortgage loans. Any mortgage loan (other than temporary financing such as a construction loan) which is secured by a first lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families and which is made in whole or in part by any entity set forth in section 3(1)(B) of RESPA is covered for the purposes of escrow account statements under this section. An annual escrow account statement is required for any mortgage loan whether established before or after the effective date of RESPA (December 22, 1974). A "reverse mortgage" made by any entity specified under section 3(1)(B) is covered by this section.

(5) *Initial escrow account statement* means an initial statement for an escrow account that includes the information in § 3500.17 (b) and (c). If a lender requires an escrow account in its loan documents or otherwise as a condition for making the mortgage loan, or agrees to establish an escrow account voluntarily before closing, the statement is required to be a closing document. If a lender or servicer establishes an escrow account after closing, and the escrow account is not a requirement or condition for closing, the initial statement shall be submitted to the borrower within 45 calendar days after the establishment of the escrow account, and must include the information in § 3500.17 (b) and (c).

(6) A *reverse mortgage* means a new first lien mortgage loan on a mortgagor's previously owned property which allows the mortgagor to receive cash advances secured by the mortgaged property.

(7) *Servicing* means receiving any scheduled periodic payments from a borrower involving a federally-related mortgage loan, and making payments of principal, interest and escrow account charges related to such loan. A lender performs servicing functions when it makes escrow account payments.

(8) *Settlement* means the process of executing legally binding documents regarding a first lien relating to a federally-related mortgage loan. ("Settlement" may also be called "closing" or "escrow" in different jurisdictions.)

(9) *Submission* of an escrow account statement means that the servicer takes an action of delivery, as defined in § 3500.17(a). (Hand delivery constitutes submission if an acknowledgment of receipt is obtained by the servicer, as set forth in § 3500.17(a)(1).)

(10) *System of recordkeeping* is the method of keeping information employed by the servicer that reflects the facts relating to that servicer's handling of the borrower's escrow accounts, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to the borrowers. When servicers submit escrow account statements by hand delivery, the system of recordkeeping will include information that reflects the date of delivery, the identity of the person accepting delivery and a signed acknowledgment of receipt from the borrower. When the servicer submits an escrow account statement to the borrower by delivery, as specified in § 3500.17(a)(1), the servicer's system of recordkeeping will reflect the date of mailing, the name and address of the borrower to whom the statement was mailed, and whether the statement was returned to the servicer as undeliverable.

(b) *Initial Escrow Account Statement.* (1) Any lender or servicer who has required or who has voluntarily established an escrow account in connection with a federally-related mortgage loan shall submit to the borrower an initial escrow account statement that itemizes the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from that escrow account during the first 12 months after the establishment of the account, and the anticipated due dates of those charges. The statement may be incorporated into the HUD–1 as set forth in § 3500.17(c), or may be delivered as a separate document.

(2) *Time of submission of initial escrow account statement.* (i) For any escrow account which is to be established at or before the time the mortgage loan is closed, the statement shall be submitted to the borrower, using the format prescribed in § 3500.17(c), at the closing of the loan, and submission of initial escrow account statement is a prerequisite for closing the loan. An escrow account which is required by the lender's loan documents is always established at or before the time the mortgage is closed.

(ii) For any escrow account which is established by the lender or servicer after the date of closing of the loan, the lender or servicer shall deliver the initial statement to the borrower, using the format prescribed in § 3500.17(c), no later than 45 calendar days after the establishment of the escrow account.

(c) *Format for initial escrow account statement.* The following format shall be used for the initial escrow account statement:

Initial Escrow Account Statement

An escrow account is being established to assure that certain obligations relating to the mortgaged property, such as taxes, insurance premiums and other charges, are paid. The escrow account may include charges that you have agreed voluntarily to have collected. This initial escrow account statement sets forth amounts to be collected, along with your principal and interest payments, to pay anticipated expenses during the first 12 months after your account is opened.

Date first escrow payment due:

Your escrow account payment will be $_____ per _____ (month or other period).

Payee	Anticipated date due	Estimated amount
.....	.....	$.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Estimated Annual Total Due:	.....	$.....

These figures are frequently estimates and may be subject to revision during the escrow account computation year. The escrow account normally continues outstanding during the life of the loan. Within 30 days after one year from the first escrow payment date set out above, you will receive an annual statement showing actual receipts and disbursements in your escrow account for the preceding year.

This format is a permissible deviation to the HUD–1 under § 3500.9 of Regulation X. The statement may either be attached as an additional page to the HUD–1, or included in the basic text of the HUD–1 when computer printouts or other permissible variations under § 3500.9 are used. It may also be delivered separately. The term "reserve account", "impound account" or other term typically used in the locality to identify such an account may be substituted for "escrow account". A specific "payee" need not be identified by name if sufficient information is given to identify the use of the funds, *i.e.* county taxes, hazard insurance, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, each payment and date due should be identified. If there is more than one taxing body, each should be identified. "Anticipated date due" means when the obligation is normally paid in the ordinary servicing of mortgage loans in the locality. Monthly or annual principal and interest information may be added. The format may be otherwise altered for convenience of spacing, adding additional lines, and conformity with other documents, including making the format a part of another document, so long as all of the text of the format is utilized.

(d) *Annual Escrow Account Statements.* For every federally-related mortgage loan for which there is an outstanding escrow account, a statement must be submitted to the borrower not less than annually after the conclusion of each escrow account computation year beginning on or after January 1, 1991. Any servicer's annual escrow account computation year which begins on or after January 1, 1991 is covered by this provision. Within 30 days after the conclusion of each computation period, the lender or servicer must deliver to the borrower an escrow statement which clearly itemizes, at a minimum, the following information:

(1) The amount of the actual payment from the borrower (or in the case of a reverse mortgage, to the borrower), including principal, interest, and escrow account payment (stated as an aggregate amount for the computation period);

(2) The portion of the actual payment placed in the escrow account (also stated as an aggregate amount for the computation period);

(3) The total amount paid out of the escrow account for each separately identified escrow item;

(4) The balance in the escrow account at the end of the computation period);

(5) Notice of any shortage of funds in the escrow account (unless such notice has already been given to the borrower within this annual escrow account computation year); and

(6) The current borrower payment (as of the date of the annual statement) for principal, interest and the escrow account.

For purposes of transition, a lender or servicer may issue a "short year" annual escrow account statement containing the information in § 3500.17(d)(1) through (6) and immediately thereafter establish a new effective date as the beginning of the escrow account computation year. The "short year" statement shall be delivered within 30 days from the effective date of the end of the "short year". If servicing is sold within the annual escrow account computation year, the annual statement requirement shall be satisfied by the transferor servicer submitting a "short year" statement reciting the information in § 3500.17(d)(1) through (6) through the effective date of the transfer of servicing (as defined in § 3500.21(a)(2)) within 30 days of the effective date of transfer. The effective date of the transfer of servicing shall be used by the transferee servicer for establishing the new escrow account computation year. If a mortgage loan is paid off during the escrow account computation year, a "short year" annual statement shall be submitted to the borrower within 30 days after the servicer's receipt of pay-off funds.

(e) *Notification of Shortage in Escrow Account.* If a lender either requires an escrow account to be established or voluntarily establishes an escrow account for the purposes of assuring payment of taxes, insurance premiums, or other charges with respect to the mortgaged property, the servicer shall notify the borrower at least once during the escrow account computation year in the event that there is any shortage of funds in the escrow account. This notification may be part of the notice required by § 3500.17(d)(5), or may be delivered separately to the borrower.

(f) *Timely payments.* The lender or servicer must make payments from the escrow account for taxes, insurance premiums, and other charges in a timely manner as such payments become due, even if the escrow account contains insufficient funds for such payment.

(g) *Recordkeeping.* (1) A servicer must maintain a system of recordkeeping reflecting the servicer's handling of the borrower's escrow accounts, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The system of recordkeeping shall be maintained by the servicer throughout the existence of the borrower's escrow account and for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Secretary with information contained in the servicer's system of recordkeeping for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Secretary's written request for the information.

(i) To aid in investigations, the Secretary may also issue an administrative subpoena for the production of documents, and for the testimony of such witnesses as the Secretary deems advisable.

(ii) If the subpoenaed party refuses to obey the Secretary's administrative subpoena, the Secretary is authorized to seek a court order requiring compliance with the subpoena from any federal district court of the United States within the jurisdiction of which HUD's inquiry is being carried on. Failure to obey such an order of the court may be punished as contempt of court.

(4) Borrowers may seek information contained in the servicer's system of recordkeeping by complying with the provisions set forth in 12 U.S.C. 2605(e) and in § 3500.21(d) of this part.

(5) After receiving a request (by letter or subpoena) from the Department for information relating to whether a servicer submitted an escrow account statement to the borrower, if the servicer is unable to provide the Department with information from the servicer's system of recordkeeping that the servicer submitted escrow account statements to the borrower, the Secretary shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(h) *Penalties.* (1) Failure to submit an initial or annual escrow account statement to a borrower shall constitute a violation of the Act and these regulations. For each such violation, the Secretary shall assess a civil penalty of

$50, except that the total of the assessed penalties shall not exceed $100,000 for any lender or servicer for violations that occur during any consecutive 12-month period.

(2) The violation described in paragraph (h)(1) of this section shall be determined under a strict liability standard. Violations do not require any proof of intent. However, if a lender or servicer intentionally disregards the requirements that it submit the escrow account statement to the borrower, then the Secretary shall assess a civil penalty of $100 for each violation with no limit on the total amount of the penalty.

(i) *Civil Penalties Procedures.* The following procedures shall apply whenever the Department seeks to impose a civil money penalty for violation of 12 U.S.C. 2609(c) of RESPA:

(1) *Purpose and scope.* This paragraph explains the procedures by which the Secretary may impose penalties under 12 U.S.C. 2609(d). These procedures include administrative hearings and appeals, judicial review and collection of penalties. These specific regulations govern for penalties imposed under 12 U.S.C. 2609(d), and where noted, adopt those portions of 24 CFR part 30, subpart E, that apply to all other civil penalty proceedings initiated by the Secretary.

(2) *Authority.* The Director, Office of RESPA Enforcement, Office of Single Family Housing, U.S. Department of Housing and Urban Development, has the authority to impose civil penalties under 12 U.S.C. 2609(d) of RESPA.

(3) *Notice of intent to impose civil money penalties.* Whenever the Department intends to impose a civil money penalty for violations of 12 U.S.C. 2609(c) of RESPA, the responsible program official, or his or her designee, shall issue a written notice to any lender or servicer (hereafter servicer) on whom the Secretary intends to impose the penalty. The Notice of Intent to Impose Civil Money Penalties (Notice of Intent) will provide:

(i) A short, plain statement of the facts upon which the Secretary has determined that a civil money penalty should be imposed, including a brief description of the specific violations under section 2609(c) with which the servicer is charged and whether such violations are believed to be intentional or nonintentional in nature, or a combination thereof;

(ii) The amount of the civil money penalty that the Secretary intends to impose and whether the limitations in 12 U.S.C. 2609(d)(1) apply;

(iii) The right of the servicer to a hearing on the record to appeal the Secretary's preliminary determination to impose a civil penalty;

(iv) The procedures to appeal the penalty;

(v) The consequences of failure to appeal the penalty; and

(vi) The name, address and telephone number of the representative of the Department, and the address of the Chief Docket Clerk, Office of Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) *Appeal procedures*—(i) *Answer.* To appeal the imposition of a penalty, a servicer shall, within 20 days after receiving the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice. The Answer shall include a statement that the servicer admits, denies or does not have (and is unable to obtain) sufficient information to admit or deny each allegation made in the Notice of Intent. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted.

(ii) *Submission of evidence.* A servicer who receives the Notice of Intent has a right to present evidence that:

(A) The servicer did submit the required escrow account statement(s) to the borrower(s); or

(B) Even if the servicer did not submit the required statement(s) that the failure was not the result of an intentional disregard (for the requirements of the Act for purposes of determining the penalty). Evidence must be submitted within 45 calendar days from the date of the Notice of Intent, or by such other time as may be established by the Administrative Law Judge (ALJ). Failure to submit evidence within the required period of time will result in a dismissal of the request for an appeal and the imposition of the penalty.

(iii) *Review of the Record.* After a timely submission of evidence by the servicer, the Administrative Law Judge will review the evidence submitted by the Department that shows that the servicer failed to submit the escrow account statements to the borrower(s), and (if applicable) whether that failure was the result of an intentional disregard for the requirement of the Act to submit the statement. The Administrative Law Judge shall make a determination based upon a review of the written record, except that the Administrative Law Judge may order an oral hearing if he or she finds that the determination turns on the credibility or veracity of a witness, or that the matter cannot be resolved by review of the documentary evidence. If the ALJ decides that an oral hearing is appropriate, then the procedural rules set forth at 24 CFR part 30, subpart E shall apply, to the extent that they are not inconsistent with these rules.

(iv) *Burden of Proof.* The burden of proof or the burden of going forward with the evidence shall be upon the proponent of an action. The Department's submission of evidence that the servicer's system of recordkeeping lacks information that servicer submitted the escrow account statement(s) to the borrower(s), shall satisfy the Department's burden. Upon the Department's presentation of evidence of this lack of information in the servicer's system of recordkeeping, the burden of proof shifts from the Secretary to the servicer to provide evidence that it submitted the statement(s) to the borrower.

(v) *Standard of Proof.* The standard of proof shall be the preponderance of the evidence.

(5) *Determination of the Administrative Law Judge.* (i) Following the hearing or the review of the written record, the Administrative Law Judge shall issue an initial decision which shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. The decision shall include a determination whether the servicer has failed to submit any required statements, and if so, whether the servicer's failure was the result of an intentional disregard for the law's requirements.

(ii) The Administrative Law Judge shall issue the initial decision to all parties within 30 days of the submission of the evidence, or the post-hearing briefs, whichever is the last to occur. If the initial decision imposes a civil penalty, it shall also contain a statement describing the right of any person determined to be liable for a civil penalty to file a notice of appeal with the Secretary.

(iii) Within 15 days after receipt of the initial decision, any party may file a notice of appeal to the Secretary seeking a review of the decision. Unless the initial decision of the Administrative Law Judge is appealed to the Secretary, it shall constitute the final decision of the Department and shall be final and binding on the parties.

(iv) The notice of appeal shall be accompanied by a statement of not more than ten pages, setting forth the specific findings of the Administrative Law Judge that are being challenged and the factual or legal basis for any challenge.

(v) The opposing party may respond to the appeal. The response may not exceed ten pages and shall be filed with

the Secretary within ten days after receipt of the notice of appeal.

(vi) The Secretary shall decide within 30 days after receipt of a notice of appeal whether to review or to decline review of the initial decision. The Secretary shall serve copies of his decision on all parties.

(vii) The Secretary, after review, may affirm, modify, or reverse the initial decision. The Secretary's decision shall be issued within 90 days after the initial decision was filed.

(viii) If, after considering the notice of appeal, the Secretary declines to review, the initial decision becomes final on the date the decision to decline to review is filed with the Chief Docket Clerk, Office of Administrative Law Judges. Any decision by the Secretary after review becomes final on the date it is filed with the Chief Docket Clerk.

(6) *Judicial review.* (i) After having exhausted all administrative remedies, a person against whom the Secretary has imposed a civil money penalty under this party may obtain a review of the Secretary's final decision by filing a written petition for a review of the record with the appropriate United States District Court.

(ii) The petition must be filed within 20 days after the Secretary's decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

(7) *Collection of penalties.* (i) If any person fails to comply with the Secretary's final decision imposing a civil money penalty, the Secretary, if the time for appeal of the Secretary's decision has expired, may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person who has failed to comply with the Secretary's final decision.

(ii) The validity and appropriateness of the Secretary's final decision imposing the civil penalty shall not be subject to review in the district court.

(iii) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the action.

(iv) Interest on and other charges for any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(8) *Offset.* In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

(Approved by the Office of Management and Budget under control number 2502-0457.)

Dated: November 1, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-29390 Filed 12-6-91; 8:45 am]

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federal register

Monday
December 9, 1991

Part VIII

Department of Health and Human Services

Department of Agriculture

Maternal and Child Assistance Programs; Model Application Form; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Maternal and Child Assistance Programs; Model Application Form

AGENCIES: Administration for Children and Families, the Health Care Financial Administration and the Public Health Service, Department of Health and Human Services (HHS) and the Food and Nutrition Service, Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice publishes a model application form that States have the option of using in full, in part, with modification or not at all. It would be used by pregnant women or by children under 6 years of age to apply for benefits simultaneously under several congressionally specified "maternal and child assistance programs": (1) The Medicaid program under title XIX of the Social Security Act; (2) the Health Care for the Homeless grant program under section 340 of the Public Health Service Act; (3) the Maternal and Child Health (MCH) Services block grant program under title V of the Social Security Act; (4) the Migrant and Community Health Centers programs under sections 329 and 330 of the Public Health Service Act; (5) the Head Start program under the Head Start Act; and (6) the Special Supplemental Food Program for Women, Infants and Children (WIC) under section 17 of the Child Nutrition Act of 1966. This notice is published in accordance with section 6506(a) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), which requires the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, to develop a model application form for the specified maternal and child assistance programs for publication in the **Federal Register.**

This model application form represents a first effort to develop a joint model application form covering the programs mandated by Congress. If modifications are necessary due to changes in program requirements, or States or other user experience, they will be pursued.

EFFECTIVE DATE: This notice is effective December 9, 1991.

FOR FURTHER INFORMATION CONTACT: David Heppel, M.D., Director, Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau at (301) 443–2250.

SUPPLEMENTARY INFORMATION:

I. Legislative Intent

Congress wanted the model application form to improve access for pregnant women and children to maternal and child assistance programs, as indicated in the following report language:

> Over the years, Congress has created a number of successful, cost-effective maternal and child assistance programs targeted to pregnant women and children ages zero through six. These include the MCH Block Grant; the Medicaid program; the migrant and community health centers programs; the health care for the homeless grant program; the Supplemental Food Program for Women, Infants and Children (WIC); and the Head Start Program.
>
> Despite their common cause, these programs are supported through several different authorities and more often than not, have very different requirements. As a result, individuals who are entitled to review services under more than one of these programs are frequently unaware of their eligibility or are frustrated by bureaucratic red tape in their attempts to obtain care.
>
> As the National Commission to Prevent Infant Mortality suggests in its 1988 report, "Death Before Life: The Tragedy of Infant Mortality," one of the most effective ways to address this probem is to streamline or refine the application process for these various programs * * *.
>
> [Congress] intends that this application form be as simple and as easy to understand as possible so as to avoid the costly and complicated application efforts that now consume both program beneficiaries and program agencies. It further intends that the Secretary, in preparing the model application form, consult with the various State agencies that administer these maternal and child assistance programs, as well as other organizations that actually provide maternal and child assistance services.
>
> Once developed, [Congress] requires that the model application be disseminated to each State agency responsible for administering a maternal and child assistance program. The [law] does not require any State agency to adopt the model form.
>
> (H.R. Rep. No. 247, 101st Cong., 1st Sess. 507–08)

II. Provisions of this Notice

Section 6506(a) of OBRA '89 (Pub. L. 101–239), enacted December 19, 1989, requires the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, to develop a model application form to use to apply simultaneously for assistance by a pregnant woman or child under age 6 from the following maternal and child assistance programs: (1) The Medicaid program under title XIX of the Social Security Act; (2) the Health Care for the Homeless grant program under section 340 of the Public Health Service Act; (3) the Maternal and Child Health Services block grant program under title V of the Social Security Act; (4) the Migrant and Community Health Centers programs under sections 329 and 330 of the Public Health Service Act; (5) the Head Start program under the Head Start Act (all administered by the Department of Health and Human Services); and (6) the WIC program under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), administered by the Department of Agriculture.

In developing such a form, the Secretary may not change any requirement with respect to eligibility under any of the programs. Use of the model application form is optional; Congress did not intend the Secretary to require that the form be adopted by any State.

Section 6506(a) of OBRA '89 also requires the Secretary of HHS to provide the model application form for publication in the **Federal Register**, and to send a copy of the form to each State agency responsible for administering a maternal and child assistance program. The programs included in the application are described below:

Medicaid

Medicaid pays medical expenses for certain eligible individuals and families with low incomes. Medicaid programs are State designed and administered within broad Federal guidelines. All States must cover certain services under Medicaid; additional benefits may be provided as optional services or under special waiver authority.

Pregnant women and children can be eligible as either categorically needy or medically needy. Generally, the categorically needy are individuals who receive cash assistance benefits or have an income level that does not exceed a certain percentage of the Federal poverty level. Some States also have a medically needy program which covers individuals who have too much income to qualify, but are allowed to "spend down" their excess income to be eligible by incurring medical expenses. At the Federal level, Medicaid is administered by the Medicaid Bureau, Health Care Financing Administration, Department of Health and Human Services; at the State level it is administered through the State health or welfare departments.

Head Start

Project Head Start provides comprehensive child development services for 3-to-5-year old, low-income, preschool children. Designed to serve Head Start children and families, the program has four major components: An education program; social services;

parent involvement; and health, which includes services for medical, dental, nutrition, and mental health. It is administered locally through grants from the Administration for Children and Families, HHS.

MCH Services Block Grant program

The MCH Services block grant program, authorized by title V of the Social Security Act, provides funds to States to plan and implement programs to improve the health of all mothers and children. Depending on State and local needs and service system characteristics, direct services supported by title V, eligibility requirements and any charges for service vary across States. Title V-supported services must be provided free of charge to those with income below the poverty level. States generally support direct services in three categories: Reproductive, prenatal and perinatal health care; preventative and primary care for children and adolescents; and specialized care and family support services for children with special health needs (CSHN) due to disabilities or chronic illnesses.

At the Federal level, title V is administered by the Public Health Service, HHS, and at the State level by programs within State health agencies. In some States, the CSHN services may be administered by another State agency. Title V services are delivered by a range of providers, including State staff, local health departments, hospitals, Community Health Centers, and other community-based agencies.

Community and Migrant Health Centers

Community and Migrant Health Centers provide basic health care, which may include primary health care, dental care, family planning services, tests, medicines, mental health, nutrition, and health education. Any person is eligible to receive services from both the Community Health Centers and the Migrant Health Centers. The charge for services received from either a Migrant or a Community Health Center is computed on a sliding scale based on a patient's ability to pay. Community and Migrant Health Centers are administered at the local level, through grants from the Bureau of Health Care Delivery and Assistance, Public Health Service, HHS.

Health Care for the Homeless Projects

All homeless individuals are eligible to receive primary health care, alcohol and substance abuse services, and mental health services from Health Care for the Homeless projects. Additionally, Health Care for the Homeless projects often provide referrals to other organizations that offer meals, shelter, and employment training. Homeless projects are administered at the local level by various agencies, including Community Health Centers, through grants from the Bureau of Health Care Delivery and Assistance, Public Health Service, HHS.

The WIC Program

The WIC program provides supplemental foods and nutrition education, at no cost, to eligible pregnant, postpartum, breastfeeding women, infants and children up to their fifth birthday. These individuals are eligible if they (1) meet an income standard or are automatically determined income eligible based on their participation, or a family member's participation, in certain health and welfare programs; (2) are determined to be at nutritional risk by a "competent professional authority" (a physician, nutritionist, nurse or other health official); and (3) live within the jurisdiction of the State and, at the State's option, within a local service area. Not all individuals who meet these eligibility requirements may be served, however, since WIC is not an entitlement program.

Each participating mother, infant or child receives individually prescribed packages of food high in protein, iron, calcium, vitamin A, and vitamin C. The Food and Nutrition Service, Department of Agriculture, provides WIC program grants to all State health departments, some territories, and some groups recognized by the Bureau of Indian Affairs. Services are delivered at the local level by various community agencies, primarily through local health care agencies.

III. Purpose of the Model Application Form

This model application form is published exclusively as guidance for States' consideration. States have the option to adopt part, all or none of the model application, and may make modifications within the parameters of the program requirements.

This is a model application form that captures all the information necessary for each of seven maternal and child assistance programs to determine whether an applicant meets the most essential Federal statutory and regulatory eligibility requirements. To keep it simple and generic enough to be useful for all the programs, the form was not designed to be a data collection form, a statistical tool, a prescreening form, a "Medicaid only short form" or a client file. After a client is found eligible or enters a program, the program may need to gather more information to provide appropriate services or to fulfill its reporting requirements to Congress.

For those programs that currently have entry forms, this form was intended to replace them where possible, thereby streamlining information gathering procedures. Moreover, for the programs which are direct service providers and do not have eligibility requirements, the form can facilitate referrals. Though an appropriate referral process is not detailed here, either referral or "one-stop shopping" is critical if the form is to be useful at the State and local level.

The States can decide the full extent of the population which will be served by this form, in addition to pregnant women or children under age 6 as specified by the legislation.

Postpartum and breastfeeding women may also be eligible and need services from the programs included on the form. Since Congress intended to simplify the application process for the maternal and child assistance population and did not prohibit the form's use by those other than pregnant women and children, the form is designed to include the whole continuum of pregnant, postpartum, and breastfeeding women; the mothers of small children; and infants and children up to age 6.

For this broad group, the form is intended to be useful as a family application. Through one application form, an individual may apply for benefits for herself and children in the family under 6 years of age. Thus, a separate form is not required for each young child. The form is also flexible enough so that men can apply for their families, but the documents use the pronoun "she" because female applicants are the most predominant users of these programs.

In addition, the form can be used for "presumptive eligibility" for Medicaid for a pregnant woman. If a "qualified provider" (as designated by the State Medicaid agency) determines that the income of a pregnant woman appears to meet the income eligibility standards, she is entitled to a limited period of Medicaid coverage as "presumptively eligible" even if the woman chooses not to complete or sign the application. Unless she completes a Medicaid application (i.e., this application or another), the provider must inform the applicant that her Medicaid coverage will end on the last day of the next month. If and when she does file a complete application, her presumptive eligibility ends when a final determination is made.

States are encouraged to explore how they can expand the usefulness of the application. Certain other populations, such as older children, may be able to use the form to apply for benefits. Other programs might be able to be included on the form and in the referral system, such as the Commodity Supplemental Food Program, primary care for residents of public housing, or mental health services. Each State needs to adopt the form in ways which are most useful to its population and its programs.

Despite the form's broad design, the proliferation of Medicaid categories means that certain women who are not pregnant may qualify for Medicaid under very specific categories about which information is not gathered on this form. For example, women or children with disabilities may be eligible for Medicaid because of circumstances not included on this form. These women, and others in certain situations, may have to use other forms to obtain Medicaid.

It is also important to note that although other family members may be listed on the form, those children ages 6 or over may be required to have a separate form completed for them to receive benefits because the form was not designed specifically for them. Moreover, children who are not part of the same economic unit as their siblings may need to have separate forms completed. Because of these or other local specific issues, certain States and localities may wish to keep their current forms and add this as another choice. The number and type of forms needed for applicants will differ by State.

IV. Process of Developing the Form

To address the legislative mandate, a Federal Interagency Work Group (FIWG) was convened. This group, composed of representatives from the five agencies responsible for administering the seven maternal and child assistance programs specified in the legislation and representatives from the Association of Maternal and Child Health Programs, met five times to discuss how the Federal informational needs of their programs could be addressed in a single application.

The FIWG focus was to gather information required by Federal law to determine eligibility of applicants. The group sorted through the information needs of each program until it developed the minimum sufficient set of data from which all programs could determine eligibility with the exception of WIC. Other data elements, such as those required for reports to Congress or to monitor program performance, were generally not included in the form in order to keep it simple. These data elements can be collected in other ways after the client is enrolled in the program.

The form has the elements required by Federal statute or regulation for each program, even if the elements apply to only one program. The major exception to this "sufficiency test" is the WIC program, which requires additional information to determine if an applicant is eligible. The WIC applicants must be determined to be at nutritional risk, a determination which requires that a "competent professional authority" gather health information and, in some cases, administer medical tests. In addition, children with disabilities or special medical conditions need medical certification to be eligible for CSHN funding or certain Medicaid categories. The FIWG concluded that certification by medical personnel should be a separate step. The application form notifies the applicant of this exception.

At the Federal level, the WIC program and Medicaid have most of the eligibility requirements, but States may have other requirements and may need even more data elements. For programs with few or no Federal data requirements, the information provided by the form will usually help these programs serve their clients better. An example is the income information requested for the Community Health Centers. The Community Health Centers do not exclude applicants on the basis of income but need this information. Clients may be charged on a sliding scale based on their ability to pay.

Although no State has combined all of these maternal and child assistance programs into one joint application, a number of States have addressed the information needs of two or three programs in one form. The FIWG reviewed these State forms, and some of the components were adapted for the Federal model application form. As States adapt this Federal model form for their own use, they should look at the forms and the process for gathering information used in other States. The Association of Maternal and Child Health Programs can make referrals about State joint applications.

In addition, while the eligibility requirements for the seven programs were examined on a side-by-side analysis prepared for the group, the Federal legislation explicitly stated that none of the eligibility requirements could be changed. Thus, conflicting eligibility requirements could not be resolved and an applicant may be eligible for one program and not others because the same information requires different results in different programs. For example, "income" may be calculated differently by each program; an unborn child may or may not be counted as a family member in certain programs. Moreover, some of these programs have different definitions for the same terms. In creating this form, FIWG tried to use terms as broadly as possible, so that the data elements could be inclusive of the needs of all the agencies.

The FIWG believes that as the programs create joint information systems, this may encourage changes in statutes and regulations to make eligibility requirements uniform and further simplify the process. Uniform requirements could allow one eligibility worker to determine at least basic eligibility for a client for all seven programs relatively quickly. Congress recently required the Secretary of Agriculture to appoint an advisory committee to report on potential simplified programs or policies that would make it easier for eligible applicants to obtain benefits from a group of programs: the Food Stamp Program; cash and medical assistance programs, under the Social Security Act; and housing assistance programs.

After a draft form was developed, the form was sent for comments to some State and local officials of these maternal and child assistance programs and to their national associations. Their comments have been incorporated into the development of the model application form.

V. Suggestions for Implementation by the States

If a State decides to use the model application form, some adaptation will likely be necessary, since the application contains only the minimum Federal requirements. At their option, States may want to add any items consistent with Federal laws or regulations, not just those needed to fulfill State requirements, but also to modify the form so it can be used by potential applicants in other eligibility groups. States may be able to delete some items, depending largely on their programs and their Medicaid requirements. States may choose to use the form in some areas on a trial basis.

The FIWG did not address implementation because it will be specific to each State's system. Nevertheless, the usefulness of this form depends on implementation, which may require either a "one-stop shopping" approach or a well-organized intake and referral system. To implement either approach, most States will need some

type of interagency agreements. Several aspects of those agreements need special attention: These include transmittal of forms, processing time, confidentiality, locally administered programs, client followup, computerization, program staff assistance, verifications, and an applicant's guide.

Transmittal: This application form, as adapted by the State, is intended to be the actual application form for each program. In general, programs are not sharing information from their own program forms with the other agencies. Applicants complete one copy of the joint application form. The form is then transmitted to other programs, as appropriate, either by paper or through a computerized system.

Processing time: As each State designs its process of disseminating the completed form among agencies, it should be sensitive to mandated processing times for applications and create a system to ensure prompt transmittal. Medicaid and WIC may have a different time period within which they are required to process the application, and the start of that time period may also be defined differently.

Confidentiality: The WIC has certain confidentiality considerations derived from its regulations. Where the applicant is applying for WIC and any other program with this form, the applicant's information will be shared with those other programs. Therefore, the WIC program requires that applicants using a joint application form specifically waive their confidentiality rights to permit the applications to be forwarded to other programs. This waiver is included in the "rights and responsibilities" section. The other programs do not have a waiver of confidentiality, since each program is not sharing information from its own forms but rather is just transmitting a joint application to the other programs.

The confidentiality issue for minors in the joint application system is complicated. The WIC program permits caretakers to sign application forms on behalf of minors; however, to protect minors' confidentiality rights from unauthorized waiver, a signature of parent or legal guardian is required for a joint application. The same form can be used in the caretaker situation, but without the parent or legal guardian's signature it cannot be transmitted to other programs. Medicaid permits a "responsible person" to sign a Medicaid application for those who cannot apply for their own benefits (such as children), whether the application is joint or Medicaid only. States should review their own regulations to determine who can sign the joint application form on behalf of minors. In addition, States may have additional confidentiality requirements that need specific attention.

Local administration: Locally administered programs should be part of the interagency agreements and the implementation system. Since States do not administer Head Start, Health Care for the Homeless programs or the Community or Migrant Health Centers programs, an application could be forwarded for consideration to the Head Start grantee or health center serving an appropriate applicant's area. If a State subcontracts with local agencies, interagency agreements will also need to include these agencies in the system.

Followup: The FIWG strongly suggests that States create a tracking process that follows the clients after they complete the joint application form, whether the followup is by the agency that collected the initial data or a single agency for all clients. The followup process is essential to ensure clients actually receive the services for which they are eligible.

Computerization: Computerization, with transmittal and referral capability could greatly increase the utility of the form. A computerized system could speed the process of transmittal as well as facilitate the followup process. As States develop computerized networks of data collection, the application can be automated to serve as a basis for the system.

Program staff assistance: States should be aware that the form was not intended to be completed without help. Where possible, clients should be assisted by program staff. Program staff can guide the clients on sections of the form that may not need to be filled out if the client already has certain benefits or is not interested in applying for them, such as the section on resources for a client already served by Medicaid. More importantly, the program staff need to explain that the form allows the client to apply to many programs simultaneously, and that the application will be sent to the relevant maternal and child assistance programs.

Where possible, bilingual caseworkers should be available if the population has a significant proportion of limited English proficient individuals. In some cases, Community or Migrant Health Centers might share their translators with the other programs, with the net goal of more services for the clients in all the programs.

Verification: States will also need to individually address verification, as each State will have specific rules concerning the documentation required. To comply with Federal regulations, programs must keep paper trails of these verifications in case they are audited, but these paper trails can be across local agencies or in one centralized place. For computerized systems, the rights and responsibilities might have to be signed on a piece of paper stored in a file or on microfiche. Guidance should be provided to program staff as to the appropriate documents.

Applicant's guide: States may want to develop a low literacy cover sheet for the form—an applicant's guide—that has a short description of the programs included in the application. The applicant's guide could be modeled on the descriptions included in "Provisions of this Notice" but adapted to each State's actual services and benefits.

Dated: September 25, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Edward R. Madigan,

Secretary, Department of Agriculture.

Explanation of Data Elements and the Regulatory Impact Statement

Data Elements

Title Block: States might need to change the names of the programs at the top of the application to the commonly understood name of the participating programs in their State.

The two other sentences in this block inform the applicant that this form is a joint application for all of the programs, with the presumption that the applicant is applying for all programs unless otherwise noted on the second page. This presumption increases applicants' access to services, even those of which they were unaware.

"Please ask for help, if there is anything on this form that you do not understand." The form was not intended to be completed without help. Program staff assistance is essential for most applicants. Even if program staff cannot go through the form with each client, they should be available to answer questions.

General Information Block: Applicant's name, home phone, and work phone. The adult filling out the application for herself and/or family is generally considered the applicant. If the application is for one child, such as a foster child, then that child can be listed as the applicant and the guardian filling out the form signs on the last page.

Home Address and Mailing Address. Often people live at one address and receive mail at another. Having two address spaces may also allow

homeless or migrant workers to enter their temporary address in the home space and list a place that mail may reach them or an emergency contact in the other. The question on shelter alerts the eligibility worker that the client is a homeless person.

Name and address of parent/legal guardian. These items are only relevant if the applicant is "a child" (a minor as determined by the State). The person listed is the one who can receive benefits on behalf of the child, which may differ from State-to-State.

Marital status is only required by Medicaid but desired by most of the other programs.

"Do you speak English?" As with all applicants, the program staff should help a non-English-speaking client, or a client that appears to have limited English proficiency, complete the application form. Other agencies will not know the client's language unless it is indicated. In addition, the Federal Interagency Work Group (FIWG) recommends that States consider publishing the forms in the major languages of their client population, especially where multilingual publications are the tradition.

Medical Insurance Information Block: "Have you or any family members living in your household been to the doctor, clinic, or hospital in the last _____ months?" alerts the person determining eligibility for Medicaid (and commonly programs for children with special health needs (CSHN)) that the individual may qualify in the medically needy "spend-down" category. The number of months varies by State, so the State needs to fill in its own requirements. Some States do not have a spend down in their programs and thus can eliminate that question.

The questions about veterans' benefits are clustered with the other insurance questions because their major purpose is to determine whether the person has other sources of medical benefits.

Household Block: Every individual living in the home should be put on the grid, family and non-family members. This grid has two primary purposes: To determine who in the family may be eligible for benefits; and to determine how many members in the household need to be supported by its income. By listing everyone in the household, the application captures all who could be considered part of the same economic unit for the different programs; the eligibility workers will then count only the individuals appropriate for their program.

The applicant should list herself on the first line. Questions about Medicaid, food stamps, and Aid for Families with Dependent Children (AFDC) indicate which other benefits the family already receives; in some cases, this provides them with presumptive or automatic eligibility for other benefits. Because legislation prohibits participation in both the WIC program and the Commodity Supplemental Food Program, States offering both programs should also include the following question in the application: Are you receiving Commodity Supplemental Food benefits?

"Applying for all Programs?" This box addresses the tension between the desire to encourage applicants to apply for all programs for which they may be eligible, even those with which they are not familiar, and the need to permit applicants to keep their information as confidential as possible. While the form presumes that applicants will apply for all the programs, this box prevents applicants from being forced into applying for all or none of the programs by allowing them to specifically deny programs. Applicants do not have to waive confidentiality to specific programs in which they do not want to participate. Asking this question phrased in the negative (if no, list * * *) means applicants have to actively request the application not be forwarded to all the programs; it allows them to limit their waiver of confidentiality but does not force them to truly understand the programs before applying for them. In any case, caseworkers should explain the programs to the applicants, and the presence of the box on the form means the applicants are more likely to ask. In addition, this box can prevent referrals made to programs from which applicants already receive benefits or definitely do not want.

The questions on pregnancy and breastfeeding will determine if the applicant or spouse is eligible for certain benefits. If another person in the family listed above is pregnant, she will have to fill out another application to get her benefits, but the information may change the number of people considered "living in the household" for certain programs.

Income Block: Name of person(s) working or receiving money, relationship to applicant, who provides the money, how often, and the amount. Types of income include: Wages; dividends and interest; AFDC; Supplemental Security Income; annuities, pensions, disability; child support, alimony; cash gifts and other unearned income.

"Do all of the people living in your household share income?" This question should help the eligibility worker determine who in the household is in the same "economic unit" which affects the Special Supplemental Food Program for Women, Infants and Children (WIC) eligibility. Households which actually have two or more "family units" who do not share groceries or put income into one household account for bills can be considered two economic units by WIC, and eligibility will be determined differently.

Resources Block: Must be filled out for Medicaid only. Some States do not require asset or resource tests for pregnant women and children and therefore this section of the form would not be applicable and could be deleted. Types of resources include: bank accounts, trust funds, automobiles, houses, property, and insurance.

"List the payments made for child care (or care for an adult who cannot care for himself) so that someone in your household can work." This information may affect the income eligibility determination of an applicant for Medicaid.

Information Required by the Medicaid Program Block: All applicants to Medicaid have a few questions and requirements that are not necessary at the Federal level for applicants to other programs (though States may require the questions for other programs). From the Federal perspective, applicants who do not want to provide citizenship and Social Security numbers can leave this section blank and still apply for the other programs. It is important to note that if any other programs at the State level require the disclosure of Social Security numbers as a condition of eligibility, the application has to be modified to reflect this, notifying the applicant whether providing the Social Security number is voluntary or mandatory for the program, citing the authority by which the number is requested, and informing the applicant how the number will be used, as required by section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a nt).

Medicaid also requires that applicants help identify other sources to pay for medical care, including providing parents' names to help the Child Support Enforcement Agency track absent parents.

Rights and Responsibilities Block: The WIC and Medicaid have the only federally mandated rights and responsibilities sections. These can be general enough to apply to all the programs, but States may need to add to them to conform to State law.

Nutritional risk is one of the few eligibility questions not handled directly

by the application because it requires certification by a "competent professional authority" (a physician, nutritionist, nurse or other health official). This notification informs clients that residency, income and categorical eligibility are not enough to qualify for WIC program benefits; applicants must also be determined by a "competent professional authority" to be at nutritional risk. In addition, under the Maternal and Child Health (MCH) program, CSHN often must have diagnosis or assessment of disabilities or chronic illnesses verified to enter the program.

States should consider listing an address where applicants could write if they want to appeal and include that in the rights and responsibilities section.

States may have further requirements for the waiver of confidentiality. The Federal laws at the end of the waiver were cited here in an effort to give people as much information in as little space as possible about how their information may be shared. States may need to revise this statement to reflect additional confidentiality provisions or to reflect changes in the regulatory citations.

Signature of Applicant/Parent or Legal Guardian and Date; and Signature of Person who Helped Complete the Form and Date. For minors, most States will require the signature of a parent or legal guardian.

Optional Block: Race/Ethnicity; Sex; Immunization. This information could be completed by the applicant. Though this information is not required to determine eligibility for any program, it is desired by many for either program or reporting purposes. These questions are in an optional box to make it clear that they are voluntary, for the purposes of data collection and statistics only. Answers will not affect either eligibility or the services received.

Agency Box: States should design this box to meet their own needs regarding disposition. The first two items in the box are simply reminders that these items (certification for nutritional risk for WIC and confirmed diagnosis of disabilities of CSHN) require an additional step to determine eligibility. The third item is an example of how verifications could be noted by the agency that first receives the information.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary of HHS certifies that a notice will not have significant economic impact on a substantial number of small entities. For purposes of the RFA, State agencies are not considered to be small entities.

This notice does not require either an impact analysis under E.O 12291 or a regulatory flexibility analysis under the RFA. The notice alerts the State agencies responsible for the maternal and child health assistance programs that a model application, as required by section 6506(a) of Public Law 101–239, is available for their use.

Section 1102(b) of the Social Security Act requires the Secretary of HHS to prepare a regulatory impact analysis if a notice will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary of HHS certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

(Catalog of Federal Domestic Assistance Programs: No. 93.714 Medicaid; No. 93.246 Migrant Health Centers; No. 93.994 MCH Services block grant program; No. 93.224 Community Health Centers; No 93.151 Health Care for the Homeless grant program; No. 93.660 Head Start; and No. 10.557 WIC)

BILLING CODE 4160-15-M

Maternal and Child Assistance Programs Model Application Form

This **model application** form can be used to apply for all or any of the following programs:

Medicaid
Health Care for the Homeless
Maternal and Child Health/Health Departments
Community and Migrant Health Centers
Head Start
The WIC Program

If you, or any people living in your household, already receive or do not want to apply for any of these programs, note this on second page.

Please ask for help if there is anything on this form that you do not understand. **Date form filled out:**

General information

Name of applicant First Middle Last			**Home phone**		**Work phone**
Home address (Is this a shelter? ☐ yes ☐ no) Street	**Apt. #**	**City**	**State**	**Zip**	**County**
Mailing address (if different from above) Street, P.O. Box	**Apt. #**	**City**	**State**	**Zip**	**County**
Name of parent/legal guardian (if the applicant is a child) First Middle Last			**Home phone**		**Work phone**
Address of parent/legal guardian Street, P.O. Box	**Apt. #**	**City**	**State**	**Zip**	**County**

Marital status of applicant Single ☐ Married ☐ Separated ☐ Divorced ☐ Widowed ☐

Do you speak English? yes ☐ no ☐ If no, what language do you speak?

Medical insurance and other related information

1. **Do you or any family members living in your household have medical insurance?**
   yes ☐ no ☐
2. **Have you or any family members living in your household been to the doctor, clinic, or hospital in the last ___ months?**
   yes ☐ no ☐
3. **Are you a veteran?**
   yes ☐ no ☐
4. **Is your spouse a veteran?**
   yes ☐ no ☐

List all the people living in your household (related and non-related)							
Names Attach extra sheet, if needed	Relationship to the applicant	Date of birth	Receiving AFDC? yes/no	Receiving Food Stamps? yes/no	Receiving Medicaid? yes/no. If yes give Medicaid #.	Applying for all programs? yes/no	If no, list program(s) already receiving or not wanted *
1.	(self)						
2.							
3.							
4.							
5.							
6.							

* Medicaid, Health Care for the Homeless, Maternal and Child Health/Health Departments, Community and Migrant Health Centers, Head Start, and the WIC Program

Are you pregnant or breastfeeding? yes ☐ no ☐

Is any other person living in your household pregnant or breastfeeding? yes ☐ no ☐ If yes, who:

Have you been pregnant in the last 6 months? yes ☐ no ☐

Has any other person living in your household been pregnant in the last 6 months? yes ☐ no ☐ If yes, who:

List all the income received by people living in your household (related and non-related)			
Name of person(s) working or receiving money ** Attach extra sheet, if needed	Who provides the money? Employer, program or person	How Often? Weekly, every 2 weeks, twice a month, monthly	What amount?
1.			
2.			
3.			
4.			
5.			

Do all of the people living in your household share income (buy groceries, pay bills, etc.)? yes ☐ no ☐

If no, list the names of the people who do not share income with you.

** Be sure to include all sources of **gross income** (before taxes) such as wages, dividends and interest, AFDC, SSI, annuities, pension, disability, child support, alimony, cash gifts, and other unearned income.

List all the resources owned by family members living in your household * (Must be filled out by **Medicaid applicants only**)

Types of resources	Whose	Value
1.		
2.		
3.		
4.		
5.		

* Be sure to include all resources such as bank accounts, trust funds, automobiles, house, property, and life insurance.

List the payments made for child care (or care for an adult who cannot care for himself) so that someone in your household can work.

Name of person(s) who works: Total amount paid: How often?

List all the family members living in your household who are applying for Medicaid (Must be filled out by **Medicaid applicants only**)

Names	Relationship to the applicant	U. S citizen? yes/no	Social Security number	Name of mother of applicant (if known and if applicant is a child)	Name of father of applicant (if known and if applicant is a child)
1.					
2.					
3.					
4.					
5.					

Social Security Number (SSN)

You must give us your SSN in order to receive Medicaid. This is required by section 1137 (a) (1) of the Social Security Act and the Medicaid regulations at 42 CFR 435.910. The Medicaid agency will use the SSN to verify your income, eligibility, and the amount of medical assistance payments we will make on your behalf. It is possible that we will also use the SSN to determine another person's right to Medicaid or to comply with Federal law requiring that we release information from Medicaid records. The information may be matched with the records in other agencies, such as the Social Security Administration or the Internal Revenue Service. These matches may be done by computer or on an individual basis. Also, if you apply for any of the other programs in this joint application, those programs will have access to your SSN and could use it in the administration of the programs.

Assignment of Rights for Medical Support and Third Party Payment

Medicaid does not pay medical expenses that a third party is supposed to pay. All persons applying for Medicaid benefits are required to assign to the State Medicaid agency any rights they may have to medical support or other third party payments for medical care. When you sign this application for yourself, or for another person for whom you can legally assign rights, you are assigning the Medicaid agency all of your rights to receive medical support or third party payments for the entire time you are on Medicaid.

Cooperation Requirements

I understand that by applying for Medicaid benefits, I agree to cooperate with the state Medicaid agency in identifying and providing information to help pursue any third party who may be responsible for paying for care and services for me (or for a person(s) on whose behalf I am applying) that are covered by Medicaid, or enabling third party payments to be made for me (or on behalf of another person). If necessary, I also agree to establish paternity for any children for whom I am applying for Medicaid benefits. If I am applying for Medicaid as a low income pregnant woman, or if I have good reason not to cooperate, I may not have to meet these cooperation requirements. If I am eligible to enroll in any insurance or benefit plan offered to me or my spouse by an employer, I may be required to enroll if the State decides that it will cost the same or less than giving me Medicaid. I understand that the State agency will pay for the costs of this coverage.

If after reading and completing this page, you decide that you do not want to apply for Medicaid be sure to note this on the second page in the top box.

Rights and Responsibilities

This form is being submitted as a joint application for one or more of these programs: Medicaid, Health Care for the Homeless, Maternal and Child Health/Health Departments, Community and Migrant Health Centers, Head Start, and the WIC Program.

I understand that this joint application form will be sent to all of the programs that I am applying for.

I agree to the release of personal and financial information from this application form and supporting documents to the agencies that run these programs so that they can evaluate it and verify eligibility. I understand that the agencies that run the programs will determine confidentiality of this information according to the federal laws, 42 CFR 431.300–431.307, the WIC regulations, 7 CFR 246.26(d), and any applicable federal and state laws and regulations.

Officials from the programs that I, or members of my household, have applied for may verify all information on this form.

I understand that if I applied for Medicaid, I must immediately tell the Medicaid agency about any changes in information on this form.

If I or people in my household have applied for WIC, and/or certain other programs, more information will be needed to determine eligibility. I will be contacted for further information as necessary.

I understand my eligibility for any and all programs will not be affected by my race, color, national origin, age, disability, or sex, except where this is restricted by law.

I have the right to appeal any decisions made by a local Medicaid, WIC, or Head Start program. Information on the appeals process can be obtained from these programs.

I understand that anyone who knowingly lies or misrepresents the truth or arranges for someone to knowingly lie or misrepresent the truth is committing a crime which can be punished under federal law, state law, or both. I understand that I may also be liable for repaying in cash the value of the benefits received and may be subject to civil penalties.

I certify under penalty of perjury that everything on this application form is the truth as best I know.

Signature of applicant/parent or legal guardian (if applicant is a child)	Relationship to applicant	Date
Signature of person who completed the form (if different from above)	Relationship to applicant	Date

Optional Information*

Race/Ethnic group: Black** ☐ Hispanic ☐ Asian or Pacific Islander ☐ American Indian or Alaskan Native ☐ White** ☐ Other (specify) ☐

Sex: Male ☐ Female ☐

Have you received your immunization shots?	Yes ☐	No ☐	Don't Know ☐
Have your children received their immunization shots?	Yes ☐	No ☐	Don't Know ☐
If pregnant, are you seeing a doctor?	Yes ☐	No ☐	Don't Know ☐

* The applicant does not have to answer these optional questions. The answers will not affect eligibility. The answers will be used only to collect information about people who apply for the programs.

** Not of Hispanic Origin.

For Agency use only

Date received by Agency_____

☐ Meets nutritional risk criteria of WIC.

☐ Meets CSHN requirements

☐ Pregnancy verified

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federal register

Monday
December 9, 1991

Part IX

The President

Proclamation 6389—To Amend the Generalized System of Preferences

Part IX

The President

Federal Register
Vol. 56, No 236
Monday, December 9, 1991

Presidential Documents

Title 3—

The President

Proclamation 6389 of December 5, 1991

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 504(a)(1) of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2464(a)(1)), and having considered the factors set forth in sections 501 and 502(c) of the 1974 Act, I have determined that it is appropriate to suspend the application of duty-free treatment accorded to articles of Yugoslavia under the Generalized System of Preferences (GSP).

2. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions thereunder.

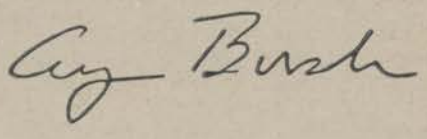
NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to Title V and section 604 of the 1974 Act, do proclaim that:

(1) General note 3(c)(ii)(A) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by deleting "Yugoslavia" in the enumeration of independent countries.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The amendment made by this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of December, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 3728/Pub. L. 102-181
To provide for a 6-month extension of the Commission on the Bicentennial of the Constitution. (Dec. 3, 1991; 105 Stat. 1232; 1 page) Price: $1.00

H.R. 1724/Pub. L. 102-182
To provide for the termination of the application of title IV of the Trade Act of 1974 to Czechoslovakia and Hungary. (Dec. 4, 1991; 105 Stat. 1233; 27 pages) Price: $1.00

H.R. 2038/Pub. L. 102-183
Intelligence Authorization Act, Fiscal Year 1992. (Dec. 4, 1991; 105 Stat. 1260; 18 pages) Price: $1.00

H.R. 3394/Pub. L. 102-184
Tribal Self-Governance Demonstration Project Act. (Dec. 4, 1991; 105 Stat. 1278; 2 pages) Price: $1.00

H.R. 3624/Pub. L. 102-185
To amend the Tariff Act of 1930 to provide appropriate procedures for the appointment of the Chairman of the United States International Trade Commission. (Dec. 4, 1991; 105 Stat. 1280; 2 pages) Price: $1.00

S. 1563/Pub. L. 102-186
National Sea Grant College Program Authorization Act of 1991. (Dec. 4, 1991; 105 Stat. 1282; 3 pages) Price: $1.00

S.J. Res. 187/Pub. L. 102-187
To make a technical correction in Public Law 101-549. (Dec. 4, 1991; 105 Stat. 1285; 1 page) Price: $1.00

S.J. Res. 217/Pub. L. 102-188
To authorize and request the President to proclaim 1992 as the "Year of the American Indian". (Dec. 4, 1991; 105 Stat. 1286; 2 pages) Price: $1.00

Last List December 5, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869-013-00001-3)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-013-00003-0)	15.00	Jan. 1, 1991
5 Parts:			
1-699	(869-013-00004-8)	17.00	Jan. 1, 1991
700-1199	(869-013-00005-6)	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	(869-013-00006-4)	18.00	Jan. 1, 1991
7 Parts:			
0-26	(869-013-00007-2)	15.00	Jan. 1, 1991
27-45	(869-013-00008-1)	12.00	Jan. 1, 1991
46-51	(869-013-00009-9)	17.00	Jan. 1, 1991
52	(869-013-00010-2)	24.00	Jan. 1, 1991
53-209	(869-013-00011-1)	18.00	Jan. 1, 1991
210-299	(869-013-00012-9)	24.00	Jan. 1, 1991
300-399	(869-013-00013-7)	12.00	Jan. 1, 1991
400-699	(869-013-00014-5)	20.00	Jan. 1, 1991
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-013-00021-8)	12.00	Jan. 1, 1991
1900-1939	(869-013-00022-6)	11.00	Jan. 1, 1991
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
2000-End	(869-013-00025-1)	10.00	Jan. 1, 1991
8	(869-013-00026-9)	14.00	Jan. 1, 1991
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10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
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11	(869-013-00034-0)	12.00	Jan. 1, 1991
12 Parts:			
1-199	(869-013-00035-8)	13.00	Jan. 1, 1991
200-219	(869-013-00036-6)	12.00	Jan. 1, 1991
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200-1199	(869-013-00045-5)	20.00	Jan. 1, 1991
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1000-End	(869-013-00052-8)	19.00	Jan. 1, 1991
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19 Parts:			
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1300-End	(869-013-00074-9)	7.50	Apr. 1, 1991
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25	(869-013-00083-8)	25.00	Apr. 1, 1991
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§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
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§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1, 1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
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27 Parts:			
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200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
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CFR Index and Findings Aids	(869–013–00053–6)	30.00	Jan. 1, 1991

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

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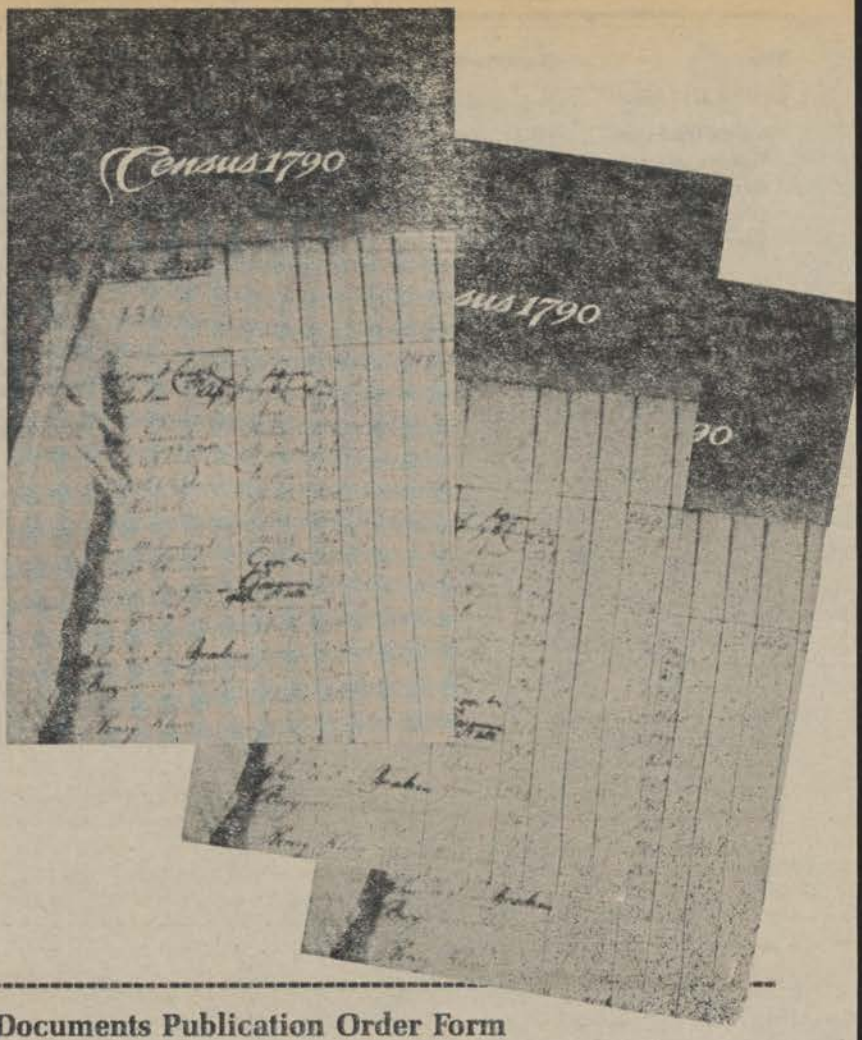
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